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STANDING COMMITTEE ON THE OMBUDSMAN

ANNUAL REPORT, OMBUDSMAN, 1985-86

WEDNESDAY, OCTOBER 8, 1986

Morning Sitting



STANDING COMMITTEE ON THE OMBUDSMAN

CHAIRMAN: McNeil, R. K. (Elgin PC)

VICE-CHAIRMAN: Sheppard, H. N. (Northumberland PC)

Bossy, M. L. (Chatham-Kent L)

Hayes, P. (Essex North NDP)

Hennessy, M. (Fort William PC)

Mancini, R. (Essex South L)

McLean, A. K. (Simcoe East PC)

Morin, G. E., (Carleton East L)

Newman, B. (Windsor-Walkerville L)

Philip, E. T. (Etobicoke NDP)

Shymko, Y. R. (High Park-Swansea PC)

Substitutions:

Henderson, D. J. (Humber L) for Mr. Mancini

McKessock, R. (Grey L) for Mr. Newman

Poirier, J. (Prescott-Russell L) for Mr. Bossy

Also taking part:

Harris, M. D. (Nipissing PC)

Clerk: Decker, T.

Clerk pro tem: Deller, D.

Staff:

Evans, C. A., Research Officer, Legislative Research Service

Bell, J., Legal Counsel; with Shibley, Righton and McCutcheon

LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON THE OMBUDSMAN

Wednesday, October 8, 1986

The committee met at 10:18 a.m. in room 230.

ANNUAL REPORT, OMBUDSMAN, 1985-86
(continued)

Mr. Chairman: We now have representatives from the three parties, so we will begin our meeting. We have two matters to discuss.

Mr. Morin: Is there a possibility that we could discuss a subject I feel should be brought to the attention of the committee immediately?

At our last meeting, we asked the Ombudsman to give us his reasons for expanding his jurisdiction over municipalities. He produced a report for the attention of the committee, strictly for the committee, for us to discuss.

I received a call on Tuesday morning from Michael D'Souza of the Canadian Broadcasting Corp. He is with Metro Morning. He asked me if I wanted to participate in a debate about the Ombudsman's intention to expand his jurisdiction over municipalities. First, I must say, he said, "to discuss the annual report." I said: "Which annual report? The annual report is passé; we have discussed that already."

By probing him, I found out that what he wanted me to discuss was the idea of the Ombudsman having more jurisdiction over municipalities. I said: "Look, my first reaction is no, because we have not discussed it in committee yet. How do I know what my colleagues are thinking? How can I form an opinion?" Let me also tell you honestly that I had not read the report. I had received it just recently, and why should I pass judgement on something I am not even cognizant of or when I do not even know what the Ombudsman wants?

What I did immediately was to call you, Mr. Chairman. You were not there.

Mr. Chairman: No.

Mr. Morin: I called your office and I called your home, but you were away, possibly still on a honeymoon.

Mr. Chairman: No. I was on my way to Toronto.

Mr. Morin: In any case, I called my other colleague who is on this committee, Mr. McLean. I said: "I am concerned, because I heard that you are to appear on a radio show to discuss this report. I do not think it is fair; I do not think it is just; I do not think it is proper, because we have not discussed it with our own colleagues. How can we go and pass an opinion?" Mr. McLean said: "I agree with you. I will not go." So he called CBC and said, "I will not be there."

I received a call the next day, Wednesday, from my executive assistant, telling me there was a debate on the radio with Mr. Philip and--

Interjection.

Mr. Morin: On CBC yesterday morning.

Mr. Chairman: That was on Tuesday, was it?

Mr. Morin: Today is what, Wednesday? I am sorry. I am mixed up in my days.

Mr. Chairman: You were contacted on Monday.

Mr. Morin: I was contacted on Monday and it took place on Tuesday morning.

I am told--I have not read the transcript; I have not read what was said--that the Liberals refused to appear on the committee because they were not in favour of the expansion of the jurisdiction of the Ombudsman and simply did not want to be there, but Mr. Shymko was there and Mr. Philip was there.

I would like an explanation. First, I am new in this game, but I think straight common sense dictates that, prior to making a decision about something you are not very sure of, you consult. I wanted to consult you; you were not there. I consulted with Mr. McLean, whose judgement I trust, and he agreed with me. Therefore, I refused to appear on the committee.

How was Mr. Shymko influenced to participate? I do not know. Was Mr. Hennessy contacted? I do not know. Was Mr. Sheppard contacted? I do not know. I was contacted, I am told, because I had so much experience with the Office of the Ombudsman, an office I respect and always will respect. I do not want to embarrass that office for any reason whatsoever.

Therefore, I would like to have an explanation, Mr. Chairman. First of all, is it proper? Was what I did the right thing to do?

Mr. Chairman: I might just say that I was contacted on Monday morning or Monday afternoon; I do not know. I found that time was such that I could not possibly go. It was about the annual report. It was not explained. I told him I would be on the train on my way to Toronto when the show was on. Then I said, "Possibly Wednesday or something like that could be worked in." He said, "It is just on Tuesday morning that I am on CBC." That is the only explanation I have as far as my own position is concerned.

Mr. McLean: Mr. Chairman, if I may clarify my position, my office was asked on Friday whether I could attend. My assistant indicated he could see no reason why I could not. On Monday morning he confirmed I would be able to attend. I got a call from you right after that expressing your concerns. I indicated to you that there really was a concern.

However, about a half an hour after you phoned me, my constituency office phoned me. We had a very bad flooding damage on Sturgeon Bay, and I was requested to be at a meeting that afternoon back in my riding. I could not be here for the meeting on Tuesday morning. My staff phoned the person at the CBC and indicated I would not be there. After that, I guess Shymko was contacted. I know we could not contact him. We could not get him on the phone. How he was contacted I do not know. That is what happened in my situation.

Mr. Philip: I find this whole thing rather bizarre, to say the least. What was tabled was a public document. It was tabled in the committee and given to the press. The press and the media could have commented on it in

any way they saw fit. They could have asked any MPP what his or her position was.

When I got the document, I actually talked to a number of members of the Legislature about their concerns about the report. As a matter of fact, I sat down and talked with Alan Pope and I talked to Mr. Gillies. We discussed the contents of the three recommendations. The one on municipalities was a broader matter, which I thought was more complex. Based on some of the reservations and some of the different models the Ombudsman was looking at, I do not think he expected immediate action on that one area.

Of the three he was recommending, among some people who seem to have a lot of influence in the Conservative Party, whose opinions I respect--I did not get a chance to talk to Mr. Harris--there seemed to be a consensus that the Ombudsman was making some reasonably good recommendations.

I then went to a party caucus meeting. You will recall that two of the three recommendations are matters I have talked about openly in this committee for a number of years and asked for jurisdiction for the Ombudsman, namely, jurisdiction over hospitals and over the HUDAC home warranty program.

The third area was the one on children's aid. Even though Dan Hill and I have talked about it at some length whenever we had an odd coffee together, and he seemed to convince me, I felt I should discuss it with some of my caucus colleagues. At that caucus retreat, I discussed it with Richard Johnston, our Community and Social Services critic. He showed part of the report to Ross McClellan, our former critic for that ministry, who is now our House leader. They said, "We think it is a pretty good report." I also talked about it with my colleague Patrick Hayes, who cannot be here today because of something in his riding. He was unanimously with me in support of the report.

It is a public report. It is quite common when something is released to the public for the media to ask for an opinion. We are all members of this committee. Just to make sure, since Mr. Morin did not have the courtesy to call me and express his concerns, but said to the CBC words to the effect of, "Ed Philip put you up to this" or "Ed Philip supplied you with this report," or something like that, I checked with the clerk of our committee. You were not available, as Mr. Morin said. I said: "My understanding was that this document was a public document. It was tabled and, therefore, it is open for any discussion or comment by any member of the Legislature."

I have been very critical of any party or members of a party who would leak a report before it is publicly tabled. We have just had a very ugly incident of that in the public accounts committee, in which one party leaked a major report. I discussed it with the clerk, and he said, "Ed, there is no case for what Mr. Morin is saying, if he is saying it is improper for you to discuss this." I met with Todd Decker, our usual clerk in this committee, and he said that it was tabled publicly and members of the press have every right to ask any member any questions they want.

10:30

By the same token, if a Liberal member of the committee wishes to refuse to comment, that is his business. If the Liberals cannot get their act together and read a report, and if Mr. Morin does not know where he stands on something and does not want to comment, that is his right.

Mr. Shymko and I went on the radio; we talked about the contents of this report. We talked about some of the reasons the Ombudsman has asked for that and the reasons are right out of the report. I talked about some of my experiences with the home warranty program, the abominable way in which it operates and that there was a need for the Ombudsman to have jurisdiction over it. That is what Public Gallery is all about, discussing current documents that are before the Legislature. I find it absurd and preposterous to suggest there is something improper in discussing a public document and I think the matter should be dropped.

Mr. Sheppard: I presume they phoned me after they phoned you. They asked me to be on the morning show and I said I could not that morning. I am surprised it was discussed on the radio before the committee discussed it. I think the committee should have discussed it first and got the general feeling of all three parties.

I am surprised my own colleague and Mr. Philip would discuss it on the morning show without bringing it to the committee. I do not know why Mr. Philip would discuss it with Mr. Pope or Mr. Gillies when neither one of them sits on the committee. Common sense would indicate that if you are going to discuss something on the radio, you would naturally discuss it with somebody who sits on the committee.

Mr. Philip: May I answer that question?

Mr. Sheppard: You can answer it afterwards.

Perhaps we could agree with some of these things, not right now but in the near future. I still think it should have been discussed at this committee before it was discussed on the radio, even if it was a public report.

Mr. Philip: Let me make one thing perfectly clear to Mr. Sheppard. I am not going to have any member or any committee censor what I say on a public document. This is a public document, and you are not going to tell me whether I appear on the radio or whether I comment on it. The moment something is made public, the press has the right to ask questions and we in the Legislature have a right either to answer those questions or refuse comment.

Mr. Shymko and I discussed the report. He has been a long-standing member of the committee and understands these issues. He appeared on the program. We happened to be in complete agreement with the Ombudsman and we said so. There is nothing wrong with our doing that. If you want to silence Mr. Shymko and me, I think your concerns are ill-founded.

Second, as to why I discussed it with Mr. Pope, I happen to respect Mr. Pope's opinions on a number of issues. I think he is a very bright man. We were working together on another matter with Mr. Gillies. It was an exciting report and I thought it was appropriate, particularly in the case of Mr. Gillies, who has worked on a number of social issues for the Conservative Party. I thought he would be an appropriate person and would have some feeling about whether the issues, particularly that of children's aid, with which I was not as familiar, would be a good idea. Both Mr. Pope and Mr. Gillies said: "Yes, I think this is a good idea. This makes some sense. We will be discussing it with our colleagues and we hope they will support this kind of thing."

Mr. Shymko went on the air and said he supported that. He has one vote on the committee. If you do not like what Mr. Shymko has said, when the debate on this eventually comes up you can vote differently from him. This is a nonpartisan committee, but do not stop Mr. Shymko or myself from saying the Ombudsman has tabled an interesting report. We agree with it. If we are sitting on the committee when that report is debated, we are going to vote in favour of it. That is our right as politicians and it is the right of the media to ask those questions. To suggest that somehow the media should not ask questions of politicians on a public report is nonsense.

My friend and colleague Yuri Shymko, who did such a fabulous job on the public gallery, no doubt will want to answer for himself.

Interjection: Something unusual is going on here.

Mr. Shymko: Compliments from Ed Philip?

Mr. Philip: However, I do not think Mr. Shymko or I have anything to apologize for.

Mr. Sheppard: The only comment I have is, why did Mr. Philip not discuss it with some of the members of this committee instead of going outside it?

Mr. Philip: You were not around.

Mr. Sheppard: You never tried to get hold of me. I never got any message in my office.

Mr. Philip: It is not my job to call you. I happened to be having a cup of coffee with Alan Pope and Phil Gillies and we discussed the report, in the same way that Mr. Shymko and I had a cup of coffee and discussed the report. All three of us happen to agree.

Mr. Chairman: Mr. Morin and then Mr. Shymko.

Mr. Shymko: Since my name is being abused--

Mr. Chairman: I will call on you after Mr. Morin.

Mr. Morin: I agree. The report became public, there is no question about it, but let us remember that it was prepared after we requested the Ombudsman to submit it for our information. Why did the report become public?

Mr. Philip: It was given to the press the day before.

Mr. Morin: I am not talking to you, I am talking to the chairman.

Mr. Philip: I am just answering you. If you are going to ask dumb questions, at least I can give you the answers.

Mr. Morin: Take your time.

Mr. Chairman: Once it is tabled, it is public.

Mr. Morin: I agree, it became public, but why was it submitted publicly in the first instance when it was us who asked for that report? It was not for the attention of the public. It was for our attention. That is one question I have which I hope someone here will be able to answer.

The other thing is that as far as I am concerned you are the chairman of this committee. If I want to know the rules or certain things that should be done, I should contact you, not Mr. Philip.

Mr. Chairman: Or the clerk.

Mr. Morin: Or the clerk, exactly, and that is what I did. My concern is that, again, it is a public document, but savoir-faire, common sense dictates to me that the first people to discuss the report should have been the committee. How can I go on a radio program and discuss a report that I am not even informed about?

I want to know what Mr. Harris and Mr. McLean and Mr. Hennessy think. I respect their opinions. I did not come here to this committee with an idea that I am already totally against the Ombudsman's expenditures on the municipalities. I want to be convinced that he is right. I want to hear what these gentlemen will say. I respect their opinions. Why should I go and voice my opinion publicly without even knowing what they think? That is my concern.

Mr. Chairman: Mr. Shymko.

Mr. Shymko: First, I thought this was to be a love-in session this morning. Love is never to be able to say I am sorry, and I do not apologize for what I may have done or said.

Mr. Morin: Love has to be challenged.

Mr. Shymko: If the discussion is with regard to the CBC radio interview in which Mr. Philip and I participated yesterday, I received a copy of a public report in my office from the Ombudsman dated September 23, 1986.

Mr. Morin: It should not have been public.

Mr. Shymko: That is another question, but let us deal with the two issues here. The first issue is that, in terms of an individual being nailed by a reporter or a member of this committee commenting on a report that is public, that is a procedure we have always followed in the past. This is a public report. Not only have we received copies of it, but also I am sure anybody who wanted a copy of that report would have received it from the Ombudsman. That is my understanding, unless the Ombudsman's office will tell us today the report was not public. My understanding is that it was. Could you nod your head, Mr. Zacks? Nobody is nodding his head. My understanding is that it is. I would like to have some explanation from the Ombudsman's office as to whether this report was public.

10:40

Second, as far as the procedure is concerned, whether the Ombudsman should have issued a public report or should have reported to us internally, I refer to the extensive discussion of this very issue in the Hansard minutes of May 7, 1986. I refer to Mr. Philip's notice of motion, which read as follows:

"I move that the committee advise the Ombudsman that in as much as the Office of the Ombudsman has been in existence for over a decade, the committee is about to undertake a broad and extensive review of the role of the office, including operations, functions and objectives; and that prior to undertaking this investigation, the Ombudsman be asked to appear before the committee with suggestions as to relevant questions that should be looked at; that the

Ombudsman be advised that included in the investigation will be the questions raised on page 10 of the 13th report, and that the Ombudsman be further advised that the inquiry will include public hearings."

My understanding is that this was a notice of motion that asked the Ombudsman to comment on the question of the intention of this committee to do a review of his office and specifically to include in his comments the question of the expansion of his jurisdiction. Whether the Ombudsman should have done this in camera, within the confines of this committee or through a public report--I do not know how you interpret that notice of motion. I imagine the Ombudsman had the discretion of following whatever routes or whatever way he wanted to highlight this. It was at his discretion. If he wanted to go public, he would go public.

This was discussed. I had some disagreement with Mr. Philip and Mr. Morin on the whole question of whether we should have a public hearing reviewing the office or whether we should focus in a narrow way on the question of the expansion. I am not going to dwell on these topics. The report is here. I would like to hear from the representatives of the Ombudsman's office whether that report is public.

Mr. Chairman: I was informed by the clerk's office that once it is tabled with the committee, it is public.

Mr. Shymko: Thank you.

Mr. Harris: I suppose this is a fair question to ask. It appears to me that Mr. Morin was under the impression that the Ombudsman was doing a special report for the committee--I am not a member of the committee--that would be brought back to the committee to be shared with the committee. I have no knowledge of whether that is the case.

Once the report is tabled, which is what happened, it is a public document. The media read it and if they want input, whether it is from members of the committee or other members who are not on the committee, whether that is the method, obviously it is not what Mr. Morin perceived was going to take place. That is what took place. I do not think Mr. Philip or Mr. Shymko can be criticized for responding to the press and saying, "Sure, I will give you my views on the report." I do not think there is anything wrong with somebody saying, "No, I would like to read the report and discuss it with my colleagues before I give my views." There is nothing wrong with that answer to the media either. That is a decision that has to be taken by every individual member of the committee or any member of the public or any other member, whether he is a member of this committee or not, once the report is tabled and is public.

Maybe we are going around the Horn in criticizing one another. I am not sure it serves a particularly useful purpose. Once a document is public, it is a member's right to comment even if he wants to take the initiative. Surely, it is a member's right to be able to respond to the media or to a media request on a public document.

Perhaps, Mr. Morin, a question to the Ombudsman about procedure would be fair for the Ombudsman to answer, but I think the discussion of what one member can do and what the member should do really does not serve a useful purpose. That is the way the system works.

Mr. Hennessy: The whole problem is that the Ombudsman's office wanted this committee to sit down and discuss some very important items, but

erred in releasing it to the general public at the same time. They could have given us the opportunity to discuss this matter. They more or less put public pressure on some members by releasing it to the general public. That is unfair as far as I am concerned.

Mr. Philip: I think that is an unfair accusation. The procedure the Ombudsman followed was to table with the committee a report we had requested. The chairman and the clerk released that to the committee. It was not released in camera. It was released as a public document for public dialogue, if you want, because some of us would want to have a public dialogue on that. It was the chairman, not the Ombudsman, who released the report. It became public by the chairman tabling the document with the committee through the clerk. There were a couple of reporters in the room and they asked for copies and got them. It was a public document at that time. It was reasonable for us to have it and for an open dialogue to go on out there.

I think Mr. Shymko and I did a service to the public by enlightening them about the document, so they in turn could talk to their MPPs and express some concerns either for or against the recommendations or so that they might ask for a copy of the report.

I do not think we should debate the report right now. It should be given some time so we can discuss it with other colleagues, other members of the Legislature, some of the groups that have recommended things, such as the various groups that are listed in this report, and have asked for expansion of jurisdiction to the children's aid. That is an open, democratic process. It was perfectly appropriate. It is very common for a document to be tabled, to be made public and for people to be given an opportunity to think about it, talk to their constituents, talk to their wives, talk to their key advisers, to talk, as I did, to people for whom I happen to have some respect in the Conservative Party and who happen to be colleagues.

We often talk about all kinds of issues. For certain management issues, I have often gone to Bette Stephenson and said: "You have a handle on this. Can you give me some insight? What do you think about this kind of thing?" On certain matters Jim Henderson, who sits behind me, will tell you I have often discussed with him issues that involved health or some other issues. We do not always agree but at least we share ideas and concerns. That is the democratic, open process. To say we should be secretive about our process, as Mr. Morin seems to be indicating, is just--

Mr. Morin: I have not said secretive, Mr. Philip. I have never used that word. Do not put words in my mouth.

Mr. Philip: To be less open than is our tradition I find offensive.

Mr. McLean: Mr. Chairman, we have had a very open discussion on this and pretty well detailed all the concerns that have been raised about it. Let us get on with the agenda.

Mr. Hennessy: What disturbs me is, when the Ombudsman on his own closed the North Bay office without consulting the members of this committee, he said it was within his rights to do it. The first thing you know, if it keeps on, he will be telling us what to do and we are elected by the people. I am concerned about this. If you give the Ombudsman everything, you will not need members of Parliament. They can say: "Let us have an Ombudsman's office like a chain store across the province. You do not need so-and-so because he goes to the Ombudsman anyway."

I am concerned when a member such as Mr. Harris, who has such a large riding, is not even consulted. For whatever reason, the Ombudsman decided to close that office and then came to tell us he had closed the office. He made the decision after great thought, but no thought was given to how the member or to the people in that riding about how they feel about it. I cannot swallow that.

10:50

Mr. Poirier: I am also a newer member, even though maybe after two years we feel like--I have respect for your number of years, sir, since I have only two. I would like, as a point of information, to know the following: If a committee of the assembly were going to discuss, at our request, a document--was the discussion on this document going to be public or in camera, for one thing?

Mr. Morin: It was to be in public. First, the report was submitted at the request of the committee.

Mr. Poirier: Fair enough. I presume it would be ordinary, if you are going to have a report that is going to be for our own use, our own governance, before it becomes public--because eventually it will have to become public at one point or another, if only the recommendations.

Mr. Chairman: Once it is tabled it is public.

Mr. Poirier: That is right. But if we are going to discuss a document at our request in confidence before it becomes public, would the normal procedure be to ask that it be done in camera and that the report be specifically not made public if you are going to have an in camera discussion before it becomes public? Is that the process? I do not know.

Mr. Chairman: I would think it was the process, but that request was never made.

Mr. Poirier: So there was no formal request for that.

Mr. Chairman: Once it was tabled, then it became public.

Mr. Poirier: Right. Maybe we would have to sharpen up--myself, anyway; I can talk only about myself. If I want to request that a document be discussed with my colleagues in private, away from the public before the recommendations become public, at that point I would specifically ask that the discussion be in camera and that the document become private until such time as the committee decides it becomes public.

Mr. Philip: That was not done.

Mr. Chairman: No; that is right. That would be the procedure, but it was not done.

Mr. Poirier: So there was no specific request for that.

Interjection: No.

Mr. Philip: The press gallery had copies of the report.

Mr. Poirier: Right. It seems that we have, as committee members, different expectations of what is expected of us pertaining to a procedure.

Mr. Philip: The procedure is fairly clear in the Legislative Assembly Act and in the way in which parliaments operate. The moment a document is public, is tabled with the committee, then it is fair game for any reporter to ask any questions.

Mr. Poirier: Right.

Mr. Philip: Even if we were going into an in camera discussion, it would be perfectly legitimate for Mr. Shymko and me to say, "I happen to feel this way, but I do not know how the committee will feel" or "I have this concern about this item, but perhaps we can look at it and see whether our concerns can be accommodated." That is done all the time.

Mr. Poirier: My last question is to my colleague Mr. Morin. Are you bringing up a question of procedure or courtesy? What would be the precise word you would use?

Mr. Morin: I am glad you have raised that. There are certain rules that are not written. Those rules apply to courtesy, etiquette, common sense, savoir-faire. When you are in doubt, you will question. That is what I did. I knew the report had not been discussed within the committee. I felt it was improper and I wanted to convince myself by calling the chairman to determine whether I was right or wrong. He was not there. I called another colleague. He said, "Gilles, I agree with you." Therefore, my judgement was confirmed. I was right in not appearing on that show before the committee had a chance to discuss it.

On the other hand, Mr. Philip is right in saying it is a public document. I said so a minute ago. I agree that it became a public document. It should not have become a public document, because we had asked for that report for us to discuss it openly.

However, to end the discussion, the point has been made. We made a mistake somewhere. I do not agree with what Mr. Philip has done. I would have discussed it before the committee. If you do not mind, we should close the discussion.

Mr. Shymko: We are not going to close the discussion, because it has to be put in the right perspective of what happened, Mr. Chairman, if I may, with your permission, it all started with our 13th report, page 10, which said the following: "The committee...will undertake a review and consideration of the question of the expansion of the jurisdiction of the Ombudsman or an expansion of Ombudsman functions in Ontario. The committee intends to conduct such public hearings where and when it considers appropriate." It was Mr. Morin who, at the beginning of that meeting on May 7, wanted this committee to focus on that very question and to discuss it. We spent an entire meeting discussing--

Mr. Morin: Not an entire meeting, but we spent a lot of time.

Mr. Shymko: A lot of time.

Mr. Morin: That is right. I agree with you.

Mr. Shymko: At the conclusion of all those deliberations, there were varying opinions as to whether we should focus on an area of possible expansion.

Mr. Morin: The report was submitted.

Mr. Shymko: Mr. Morin and I shared the view that we should have a narrow focus on the expansion. Mr. Philip had a different approach; he preferred a wider analysis of the function. These were differences of opinion. We finally came with a notice of motion which we asked the clerk to communicate to the Ombudsman. Let me read the actual notice, minutes of proceedings, which I am sure went to the Ombudsman. This is what the Ombudsman received. By reading what the Ombudsman received, we may have an idea why he proceeded the way he did.

It says the following: "The committee discussed matters relating to expansion of the jurisdiction of the Ombudsman, with specific reference to the committee's statement of interest in its 13th report, dated April 11, 1986, which states as follows"--and I am not going to read it. "After debate, Mr. Philip gave notice of motion as follows"--and I read that earlier--"the notice being basically that the committee advised the Ombudsman that inasmuch as the Office of the Ombudsman has been in existence for over a decade, the committee is about to undertake a broad and extensive review of the role of the office." We make reference to page 10 of the 13th report.

Then it says--and this is the pertinent issue--"The committee agreed to invite the Ombudsman, Dr. Daniel Hill, to appear before the committee to discuss matters relating to the expansion of the jurisdiction of the Ombudsman and the general conduct and status of the Ombudsman's affairs in Ontario."

This is why Mr. Morin has the impression that we were to wait for the appearance of the Ombudsman before this committee to discuss this question. We do not know whether that was the impression the Ombudsman had because, in his report which was tabled and which is public, this is what he says on page 4: "I am therefore pleased that the standing committee on the Ombudsman has undertaken to review the question of jurisdiction. My hope is that during this review the prime issue will be whether the people of Ontario are adequately served within the framework of the Ombudsman's current investigative jurisdiction. This is a policy question for you and your colleagues in the assembly. I review my role in this process as assisting you in your deliberations, an opportunity for which I am grateful." He considers this public document an assistance to us. He made it public.

We probably have different views on whether he should have proceeded in a nonpublic or a public manner. Whether or not that is his discretion is something we cannot discuss at this meeting.

Mr. Philip: On a point of order: Yuri, I agree with everything you said, except he did not make it public; he tabled it with the committee. We made it public; and that is an important distinction. Mr. Hennessy fell into that trap as well.

Mr. Shymko: I am glad you pointed that out.

Mr. Philip: The committee made it public, not the Ombudsman. It is not his fault that the document is public. If he had wished to, Mr. Morin, or anybody else, could have said, "This should be held in camera until we have a full and open debate on it."

Mr. Shymko: Absolutely. If you had let me complete my statement, that is exactly what I wanted to say.

Mr. Philip: Okay.

Mr. Shynko: The decision was made by the chairman of this committee--not that I am putting the blame on him--but someone made a decision to make it public. It was tabled--

Interjections.

Mr. Philip: The whole thing has been a waste of time. If Mr. Morin had any concern about courtesy, since he accused the CBC of being fed by me--and obviously he saw me as the bogymen behind this terrible thing that was going to be done to the Liberal Party of catching it offguard or something similar--then he could have called me. That would have been courteous. Instead, out of his own insecurity at not having done his homework or whatever, he was not able to appear.

11:00

Mr. Morin: You are shocking. If I did not know your background, I would say you were in the same ranks--

Mr. Chairman: Order.

Mr. Philip: He now wants to rationalize why he did not show up when he had an obligation to do so. Talking about courtesy, where is the courtesy in that? I find the whole matter laughable. I am sure Lorrie Goldstein or whoever else will be reading the transcript will find it equally laughable.

Mr. Morin: If Mr. Goldstein reads it, I hope he reads the Hansard too. I hope he reads the concern I had.

Mr. Philip: I hope he writes an article on how foolish it was.

Mr. Morin: I believe in common sense, etiquette, savoir-faire. I respect your opinion and I respect my colleague's opinion and I will not do anything to do them any harm whatsoever. I will not take any advantage of any situation for wrong political means.

Mr. Philip: You just do not respect our right to express that opinion.

Mr. Morin: Do not make remarks to me that I call unfair. It is unfair to say that. It is totally unfair.

Mr. Chairman: We have had a rather lengthy and--

Mr. Poirier: Constructive?

Mr. Chairman: --constructive, productive discussion with respect to this matter.

Mr. Morin: I have another issue.

Mr. Chairman: We will go to the next issue.

Mr. Morin: Will Mrs. Meslin be here?

Clerk of the Committee: No.

Mr. Morin: I did not participate in the last meeting. I had to go, but I read Hansard very attentively. Some remarks that were made make one believe that responsibilities were not taken seriously by some people. I will read some of the comments that were made.

Mr. McLean: What page is it on?

Mr. Chairman: What are you referring to in Hansard?

Mr. Morin: I am referring to the fact that there was no study conducted prior to the opening of the office in North Bay.

Mr. Chairman: Prior to the opening or the closing?

Mr. Morin: Prior to the opening of the office in North Bay. That is my concern and that is what I am raising this morning.

First, let me point out that I am here as a member of parliament. I am a member of the standing committee of the Ombudsman. I ask questions of the Ombudsman; I do not answer questions on behalf of the Ombudsman. But I respect and believe in the office so much that I have to come to its rescue, so that nobody offends it and nobody attacks the Ombudsman. He is our representative. He represents the assembly. He is our fellow Ombudsman. We work with him.

These are the reasons I want to talk this morning about the purpose of the opening of the North Bay office, the purpose of serving the north. If there is one person who knows the north, as far as the Ombudsman is concerned, without any humility, it is I.

I have travelled the north extensively from one corner to the other. I have visited practically all the reserves. I have worked with a backpack and my lunch to go to different places, sleeping outside in the worst conditions to make sure the Ombudsman would be well served, to make sure the north would know about the Ombudsman. I did that and I am very proud of that. I will continue to be very proud of that.

I will make quotes from Hansard. One quote is about the preparation of opening the office in North Bay.

"Dr. Hill: I do not think there are any studies available that show the reason for opening that office when it was opened.

"Mr. Zacks: I am afraid there is really nobody that I know of who is currently in the office who can give you that advice.

"Mr. Philip: Here we have an office that obviously has been set up without any kind of study....Was there a study set up, for example, to see whether Sudbury would have been a better location, with perhaps satellite services in North Bay?"

Here is another statement:

"Mr. Philip: --inappropriate management of previous people.

"Dr. Hill: I know of no records regarding how the North Bay office was opened."

Dr. Hill said the Provincial Auditor would not find anything.

"Mr. Philip: He might find out that there was no study.. It might be interesting to see how much it cost for each case that was handled and compare it to what it cost in other parts of northern Ontario."

"Mrs. Meslin: The budget total for fiscal year 1986-87 is \$110,000."

Mr. Philip: It was \$130,000.

Mr. Morin: It was \$110,000. That is from the Hansard.

"Mr. Philip: You spent \$110,000 to handle an average of one inquiry per day, five-day week. I do not have my calculator here, but it seems you are spending an awful lot of money per case.

"Mrs. Meslin: That is what we think.

"Dr. Hill: That is why it has now been closed"--referring to the office in North Bay.

"Mr. Philip: Why was North Bay chosen in the first place?"

Then there is cost comparison with other areas, etc. Those are statements I have taken from Hansard.

I would like to give a brief history of the Office of the Ombudsman from what I know of the office, an office, I repeat constantly, that I respect and believe in strongly. If anybody casts any doubt on that office, if anybody makes any recommendation that the Office of the Ombudsman should disappear, let me tell you, he is wrong. I know the staff. They are excellent staff, dedicated staff, people who are concerned about the complaints that are brought to their attention.

Mr. Philip: I do not think the Office of the Ombudsman should disappear.

Mr. Morin: I have not given those words to anyone, Mr. Philip.

Mr. Philip: Just be careful with your accusations.

Mr. Morin: I am not making an accusation. I am surprised these comments were made. Michael Dunnill, who is the manager of the Thunder Bay office, worked for me for years. He is a dedicated person. He participated with me. He is a northerner.

Mr. Sheppard: Was this on the agenda this morning?

Mr. Morin: No, it was not.

Mr. Sheppard: Should not Mr. Morin have got permission from the rest of the committee to discuss this?

Mr. Chairman: I gave him permission.

Mr. Sheppard: You gave him permission, Mr. Chairman. I must have been sleeping then. Carry on, Mr. Morin, sorry.

Mr. Morin: I believe the first hearing ever held was in North Bay in November 1975 with Arthur Maloney, one of the finest ombudsmen this office ever had.

In December 1975, I joined the Office of the Ombudsman. I was requested to join. I did so leaving a good business behind me. I was doing extremely well, but I was convinced by Arthur Maloney that I could serve my community and I did so. I still believe I did an excellent job. I still believe I made the right move by selling everything and joining Arthur Maloney to work with him.

From December 1975 until 1979, our task was to let the people know that the Office of the Ombudsman existed. We did not call it an outreach program; we did it by hearings. We conducted hearings all across the province. I addressed hundreds of groups, delivering speeches about what the office was all about, explaining the role and function of the Ombudsman. We marketed it to make sure people were informed what the Ombudsman was all about. I met with all members of the Legislature in each community where I went to let them know what we were all about. I delivered speeches to schools, unions, groups, clubs and ladies' organizations.

At one point, we did such a good job that we were accused of drumming up business through letting people know the Office of the Ombudsman existed. We did not mind because our role was to make sure everyone knew what the office was all about. We appeared on TVOntario in long discussions of what it was all about, to present the office as it was.

Let me tell you one story about the native people and how it took place that I got involved with the native people. We had a meeting with the Six Nations. Arthur Maloney was there with some members of our staff. Arthur was this type of man. When an elderly Indian person stood up and said, "How come you have three trilliums? What do they represent?" Mr. Maloney said, "One for the anglophones, one for the francophones and one for the ethnic people." She said: "How come there is none for the native people? We were the first ones here." Arthur Maloney said: "You are right. You will have a fourth one." That is the reason we have four trilliums and the rest of the province has three trilliums.

He said, "From now on, Mr. Morin is going to be responsible for native people," without asking me. I had no knowledge, no ability whatsoever, no experience with the native people, but I got involved very quickly. I embarked on a tour before doing that and I met with everyone. I met with the organization that dealt with the native people, the Ontario Provincial Police, the Ministry of Community and Social Services, the drug addiction people, etc., so I could be well informed when I went to visit the reserves.

11:10

I went to Fort Severn, which is the most northerly part of Ontario, and started to go to all these places. I went to Big Trout Lake, to Ogoki, to Pikangikum, you name it. I was gone for two weeks to make sure that people would know about the existence of the Ombudsman. I was also the first one to make sure there was a pamphlet written in Cree and in Ojibway. I made a recommendation at that time that we should also have native people on our staff. Peter Kelly, who later on became the chief of Sabaskong--I think you know him, Mr. Hennessy--stayed with us for only two weeks. He missed his family too much and went back home.

After that, Michael Dunnill and I established a real good rapport with the native people and made sure we could visit them. It was costly. I asked Arthur Maloney for more funds, and he said, "Gilles, as long as you serve them well, there will be no problems with funds." I appeared before the select committee on the Ombudsman at that time to let the members know what it was all about. I have the notes here.

At the request of Mr. Maloney, we conducted a study, which I will distribute, of why and where we should open an office in the north. The first office we opened was in Thunder Bay, because that was the most distant place from Toronto and we felt that was where we should establish ourselves. We established an office in the north for the simple reason that each time we went to the north--in 1978 and 1979, we had conducted over 120 hearings--each time we were there, we were asked: "When are you going to open an office in the north? The philosophy of the north is different." It did not take me long to understand that was true.

Nor did it take me long to understand that they required the services of the Ombudsman and that they required the presence of the Ombudsman. We opened an office in Thunder Bay in June 1979. Michael Dunnill was the area manager. In order to be sure that the whole office would be monitored, a weekly report was submitted to me. There was also a monthly report submitted on what was going on and how we could best serve the north. Do not forget that at that time there was no office in Kenora, and Thunder Bay covered the whole of northwestern Ontario.

There were three people at that time, and they conducted the hearings. The format was totally different from what it is today. In the meantime, I was still in Toronto, and the hearings were conducted across the rest of Ontario. The investigations were starting to be conducted locally in Thunder Bay. Were people ever pleased. Finally, we had one of ours. Finally, we had someone in the north who was there to cater to our needs and to cater to our concerns. The territory covered as far as area is concerned was huge. I think all of you have been to northwestern Ontario and you know what it is like. The staff was limited to three people.

In April 1980, again at the request of the Ombudsman, we conducted a study. We did not go into too many details because we had learned from experience that offices were required in the north. We knew that. We had been there; we had been all over the place. Did it require a thorough study to decide the north would have to be served? No, because we had gone through it. We had heard the people. We opened our office in North Bay. Let me go through the report and give you the reasons why we did that. It is quite clear.

Mr. Philip: On a point of order, Mr. Chairman: We have the report. If this is going to be debated, it should be put on an agenda. We have a schedule for today.

Mr. Chairman: How long are you going to be?

Mr. Morin: I will not be long. I will try to be as brief as possible.

Mr. Philip: I do not need the report read. I can read it myself.

Mr. Morin: If you look at the last Hansard, there were pages and pages of Mr. Philip's comments.

Mr. Shymko: Mr. Morin realizes we have a tight schedule, and I think he will be reasonable.

Mr. Morin: I will be reasonable.

Mr. Shymko: We should let him say what he has on his mind.

Mr. Morin: I will be reasonable. I am that type of person.

The report was submitted. The reasons the office should be opened and should be located in North Bay were substantiated by the number of complaints in the places where we were.

Later, when the new Ombudsman came in, I submitted a northern report, which was very thorough. Sudbury was considered each time. Why did we choose North Bay? It was because it was the best location. Here is a copy of the northern report, if you want to distribute it. This will give you all the comments that were made at that time. I suggest that each of you acquaint yourself with these reports. I think Mr. Harris has comments to make on cost comparison.

If this is to be discussed once more, I will wait until that time, at the suggestion of my good friend Mr. Shymko. I have many more things to say.

Mr. Philip: This so-called report that is being tabled is hardly the kind of study I was referring to as a responsible fiscal study which should have been done before opening up an office that at this time was costing something like--I thought we were quoted \$130,000 by Mrs. Meslin; I gather Mr. Morin is saying it was \$110,000.

In any case, it does not answer what was tabled with us in the memorandum. It certainly does not cover the kind of extensive study one would expect if one were going to spend that kind of money.

Mr. Morin: We should ask the Ombudsman to appear before the committee.

Mr. Philip: That may well be required. Since they are past expenditures, I do not primarily see this at the moment as being necessarily an Ombudsman committee function, although I have no objection to discussing it in this committee.

I would rather suggest the Provincial Auditor has the staff and the expertise and is used to looking at whether clear, set objectives are in force before money is spent and whether there are clear evaluation tools to evaluate and monitor the success of a program. I will be referring this, and I have indicated this to Mr. Harris, to the standing committee on public accounts and I will suggest the Provincial Auditor look into the adequacies and the safeguards that were involved when this office was set up, an office that was so successful we are told it was getting, on average, one call--not one case but one call--a day.

Mr. Morin: That is for 1985-86. The \$110,000 is on page 16 of Hansard.

Mr. Philip: That is fine if it is \$110,000. It could also be a mistake by Hansard. I will check with Mrs. Meslin and see what figure she quoted, but whether it was \$110,000 or \$130,000--

Ms. Evans: I believe the \$130,000 referred to the cost of closing the office.

Mr. Philip: Then I stand corrected. However, whether it was \$110,000 or \$130,000, it is still a lot of money to spend for one call per day. One has to ask whether there are more effective ways of serving those people and why it went on that long when there are so many communities in northern Ontario, in areas such as Sudbury, that require the services of the Ombudsman.

The Provincial Auditor has the expertise in the accounting functions to examine that. He could then table it with the public accounts committee and we would have a study that could come back to the Ombudsman committee for future recommendations on how one goes about opening other offices to ensure they are not only successful but also protect the taxpayers' dollars. I think that is the reasonable course to take.

Mr. Shymko: On a point of order, Mr. Chairman: I do not see the discussion of the closure of the North Bay office on the agenda. Are you suggesting we place it on the agenda formally and discuss it as a first priority? Or do you suggest we do this formally in the afternoon, with more time allocated? I want to know the status of that point on the agenda. Is it on the agenda and is it for full discussion, so we do not have to cut off people who may want to comment further on this?

Mr. Chairman: It could be included in other business.

11:20

Mr. Shymko: It will be under other business?

Mr. Chairman: It could be.

Mr. Shymko: Are you changing other business to make it the first item on the agenda?

Mr. Chairman: We have been discussing other business this morning.

Mr. Shymko: In other words, this is on the agenda.

Mr. Chairman: It is at the present time.

Mr. Harris: It sounds as though there will be further discussion, perhaps while we are discussing the minutes. Maybe it is normal procedure for a committee to review Hansard in the minutes of a previous meeting. I have a couple of comments, and if it is the wish of the committee that it be discussed in some detail at a later date, of course I would be very interested in that. I also have no objection to Mr. Philip's suggestion that the standing committee on public accounts look at the whole question as well.

If I can be allowed a couple of minutes, let me refer to the minutes and make a couple of comments. I would be pleased to come back if the committee wants to discuss it this afternoon or any other time.

A couple of things disturb me in the Hansard of Wednesday afternoon, September 24. On page 12, the Ombudsman says, point 4, "The North Bay office has engaged in considerably fewer outreach activities since January 1986 than any other regional office, including the recently opened part-time field offices."

On page 37, Dr. Hill, in answer to my question about outreach programs, advertising and what not, says, "We do not have that figure in front of us, but we do know"--although he had enough information to make a statement that appears to be critical of the office--"that we have had advertising campaigns; we have had educational campaigns. We have met there and we have had public meetings. Mr. Savage has arranged and worked with Mr. Moody for an extensive outreach program there. Despite all those efforts, we are still getting the same result."

That implies to me that all the outreach efforts were done there that should be done there; in spite of that, we are getting the same result. Back on page 12, it appears very critical of the outreach efforts. When we end up in a discussion of that, if the Ombudsman is here, I believe he may want to address that.

I would also like to comment on a couple of the figures just so they are on the record and so I do not surprise the Ombudsman when he delves into this.

A great discussion has been made about \$233.84 per complaint handled in the North Bay office. It is my understanding when we talk about location of the office--and I do not believe there is any secret--that the Ombudsman or somebody in his office is trying to prepare a report that will say the office should be in Sudbury. Of those calls that come in, of which everybody is so critical, if you check the figures--and I would like to see them tabled--it is my understanding that there are more calls from the three ridings around North Bay than there are, for example, from the three Sudbury ridings. So equal populations, equal area. The figures we talk about for North Bay include Sudbury. They include North Bay. They include Timiskaming. They include those areas.

If you were picking a location, there seems to be some suggestion that Sudbury will have more. At this point, it is my understanding that Sudbury has fewer than the three areas close to North Bay, in addition to the fact that North Bay access-wise is really at the centre of that activity.

Let me also talk about the \$233.84 figure. Much has been made of the fact that the business generated in the north is dealt with in the north. The Ombudsman's annual report, 1984-85, jurisdictional complaints, \$5,366. A budget of \$5.875 million. Cost of dealing per jurisdictional complaint, \$1,094.85 per complaint. Total number of complaints, 13,458. Budget, \$5,875,000. The cost of dealing per complaint across the province, notwithstanding Thunder Bay, which I assume brings the average down drastically, is \$436.54. North Bay does it for half of what Toronto or the rest of the province does.

In 1985-86, total complaint volume, jurisdictional complaints, 5,235, down across the province. Cost for those complaints, \$1,156, based on the budget for 1985-86. Total complaint volume, 14,210. Cost per complaint, \$425.89. Cost in the North Bay office, \$233.84, or about half of what it costs to handle these complaints in the rest of the province. This great cost per complaint is a justification for shutting down the North Bay office.

I have lots of information. I do not want to go into it in great detail, because I suspect it is going to be talked about more in the standing committee on public accounts and in this committee. But I would ask this and pass this on to the Ombudsman: There is supposedly a study under way. For the life of me I cannot understand, the people of North Bay cannot understand, the media in northeastern Ontario cannot understand--everybody I have talked to--why you shut down a facility and then study how you are going to provide

that service. This is unacceptable to anybody I have talked to in northern Ontario.

I believe the Ombudsman has been given some bad information. As most of us know, statistics can be used to say anything. In one case, \$233 appears to be a terrible, horrendous figure. In another example it is less than half, or about half, what it costs the office to operate in Toronto or on average across the province. I think the Ombudsman, because of misinformation he has been given, has made a very radical decision based on that information.

In my experience, he is a compassionate man; he is an understanding man. I believe he has the best interests at heart. In the light of the information I have presented and in the light of the information that I believe he has been given to make the decision on, he should change his mind on the timing and leave the North Bay office open--it is operating at half the cost of offices in the rest of the province--while a study is under way, while the committee looks at it and while the public accounts committee looks at it. I believe that would be in the best interests of the public of northeastern Ontario, and through these comments to the Ombudsman I would make that compassionate request to him at this time.

Mr. Chairman: We will now have considerations of matters relating to the dispute between the Ombudsman and the public trustee. You have a couple of documents that Ms. Evans has prepared.

Ms. Evans: I will explain them. One document is entitled Summary of Position Taken by the Ombudsman and the Public Trustee at the Meeting of the Standing Committee. This briefly outlines the arguments made by both Dr. Hill and Mr. McComiskey.

The two basic disputes that Mr. McComiskey raised were the issue of his confidentiality section and the issue of the jurisdiction of the Ombudsman to investigate complaints where he believes the court has jurisdiction. The Ombudsman was not as concerned with those questions and was concerned rather with issues of lack of co-operation. The committee--and I stand to be corrected--is of the view that perhaps the two questions are related and that what the Ombudsman is viewing as lack of co-operation is, in the mind of the public trustee, an issue of jurisdiction and confidentiality.

11:30

In the second paper, which is a memorandum, the statutory provisions concerning confidentiality and some of the provisions concerning jurisdiction are set out. I noted on the front that in respect of matters of mental incompetency and the handling of the estates of mentally incompetent persons, the public trustee does not have a statutory basis for asserting that the jurisdiction resides in the court. Rather, he takes his authority from the order of the court giving him the committee ship and propounding a scheme, which he says then the court, rather than the Ombudsman, is empowered to review.

I do not know how the committee wants to proceed; whether questions would be appropriate or whether you would like further remarks.

Mr. Henderson: I have one or two questions of clarification that I want to get framed right in my mind, because they are going to influence my view of this.

Am I right in understanding that anybody can bring a complaint to the Ombudsman on any matter?

Interjection: No.

Mr. Henderson: No.

Mr. Shymko: Yes. On any matter. He decides whether--

Mr. Henderson: I guess what I am getting at is this question of confidentiality. Should it be related to the question of who can bring a complaint? That is, matters that go before the public trustee do seem to me sometimes to have a different order of confidentiality about them than issues that commonly come to the Ombudsman.

Therefore, could some of the vigour of this dispute be resolved if we paid some attention to the question of where the complaint can initiate as regards the Ombudsman versus the public trustee? That is not a good way of putting it. What I am getting at is that if anybody can raise a complaint, some matters are going to cross into issues where confidentiality is important where the public trustee is concerned that would not be where the Ombudsman is concerned. Do you follow what I am getting at?

Ms. Evans: I do. I think that, in respect of the public trustee, his only concern with confidentiality is with what his statute in fact says. He stated for the committee that he personally had no objection to the Ombudsman viewing the files, as he knows the Ombudsman is also bound by confidentiality rules. His concern is that his statute, he feels, does not allow him to release his files to the Ombudsman's office in certain circumstances.

Your question is also looking at jurisdiction, whether the Ombudsman is empowered to investigate complaints. Page 3 has the jurisdiction. You have the relevant provisions. The Ombudsman must look at section 15 of his own act to determine whether he can pursue a complaint--although he can receive a complaint from anybody about anything--but whether he can pursue it must be tested according to section 15.

Sometimes the public trustee says, "Yes, you have jurisdiction," and sometimes the public trustee says, "No, you do not have jurisdiction, because someone else has jurisdiction."

Mr. Philip: We have just obtained these documents. I would like, since they refer to statutes, to have a little bit of time, maybe half an hour or an hour, to sit down and go through them. Our pursuing this at this time is probably not the wisest.

I would move that we adjourn until two o'clock, which will give members time to look through the research that Ms. Evans has prepared for us, and then come back and perhaps ask her some questions based on our having read those documents.

Mr. Hennessy: I will second the motion.

Mr. McLean: Mr. Chairman, before you do that, I would like a clarification of what your agenda is going to be for this afternoon. We have not really followed it very well this morning and it is almost noon now. I would like to know what we are going to deal with this afternoon: this document from the public trustee on the Ombudsman or the expansion of the Ombudsman's jurisdiction.

Mr. Bell: I suggest this meeting today is very useful, I hope, for the committee to reach its conclusion on what, from its perspective, needs to be done or reported to the Legislature on the problem between the public trustee and the Ombudsman. I think Mr. Philip's suggestion for a time to study the document is well founded. It will refresh all our memories.

I do not think it will have to take very long this afternoon. I have not spoken to anybody, but I think the second item would be the question of what to do now with this Ombudsman's report on expanded jurisdiction. Now that people have it, what should this committee do as a committee? It is not only that time has to be set aside to hear from Dr. Hill and his staff, who have prepared it about the things that are in it, but also I have some questions, just from one perusal.

Then--and I think the committee members talked about this about a year and a half ago--there would be a discussion and a consideration with Dr. Hill, first on the general subject matter, and then decisions would be made about whether and to what extent this committee would pursue it in an ongoing and detailed way. I think that could be done very well within the time available this afternoon, even with an early adjournment.

Mr. McLean: Do you mean with regard to the report on the expansion of the jurisdiction?

Mr. Philip: I think what is being suggested is that this afternoon all we will do on the expansion is to set a date at which the Ombudsman will be invited to appear before us and present and answer questions on it. It would be premature for us to debate this in any detail this afternoon. I personally am still trying to get feedback from various groups and have them look at the report and see what they think. Indeed, I am inviting some people to try to meet with Dr. Hill's staff and discuss the report. Therefore, I do not see us even looking at this, other than to set a date. I think we could set a date this afternoon.

Mr. McLean: Why can we not set it now? Then that issue would be dealt with.

Mr. Philip: Can we set a date perhaps two or three weeks from now or two or three weeks after the House reconvenes? That will give us a chance to discuss it with our colleagues. If we do it when the House is sitting, it will give any member of the Legislature who is interested in any aspect of this, because it covers different portfolios and responsibilities, a chance to come in and present his views, if he wishes, to the members of this committee.

Mr. Chairman: Does anyone have any comments?

Mr. McLean: Why do we not leave it that the clerk is authorized to arrange a date when the House is sitting for the consultation with our legal people.

Mr. Philip: In three or four weeks. Sure.

Mr. Chairman: Is the committee in favour of that?

Mr. Shymko: Do I understand we will not be commenting on the report on the expansion today? Are you basically suggesting we adjourn and come back in a few weeks?

Mr. Philip: No. The suggestion is to come back at two o'clock for the consideration of the matters relating to the public trustee.

Mr. Chairman: We will deal then with these reports.

Mr. Shymko: Some of us may want to comment on the report. We had some discussion already on the procedure of this having become a public document, but I think it warrants a discussion by committee members. Second, I think we may want to discuss what was a major discussion on the nature of the hearings. I think we should have some input on that prior to selecting a date. We can select a date, but there are elements--

Mr. Philip: I am not disputing that. All I am saying is, let us have Dr. Hill come in three or four weeks and explain the report and answer some questions. Then we can make some decisions on whether we want public hearings on it or whether we want to invite any people. For example, a number of organizations are mentioned that Dr. Hill says are advocating his position. It might be useful to invite some of those, but that can be decided after we meet with Dr. Hill. It is premature to discuss it today. Let us have Dr. Hill make a presentation to us on it, answer a few questions, and then we can decide whether it is worth while to go ahead with whatever procedures.

11:40

Mr. Shymko: As long as we do not perceive some kind of closure motion that we should not discuss the Ombudsman's report.

Mr. Philip: No.

Mr. Shymko: It is a major report and I thought some of us would have had--

Mr. Philip: This gives us more time to discuss it with more people.

Mr. McLean: This report has been tabled by the Ombudsman; he has everything in there that he wants to lay on the table before us. It is up to his committee to look at the report, to deal with it and make a recommendation on certain aspects of how we see it.

Mr. Shymko: If I may get back to this, some of us were caught in a situation of making public statements on the report. I read the report quickly. I have a lot of questions. I may be getting a call from the media. Yesterday the CBC came to my office to interview me on one aspect of the report. I did not have enough time to look at the implications. I had no time to call the Ombudsman's office for clarification. I may be requested or any one of us on this committee may be requested to comment on this report. It is a major topic of discussion. Then all of a sudden today we agree that we will not discuss the elements, the implications, the details of some of the things that are being said here and we will wait for the next three weeks. I am not comfortable waiting for three weeks without some answers, explanations and questions I have to have answered by the Ombudsman's office.

Mr. Philip: Yuri, unless you have developed a new type of metaphysics, the Ombudsman is not here today.

Mr. Shymko: I see his people here.

Mr. Philip: We have a major report concerning trusteeship that we want to handle right now. If you want to feel comfortable with answering questions, you should have the Ombudsman answer your questions in a session. I am saying that we are likely to have more questions if we have time to get this report, to show it to a few people, to discuss it with some of our colleagues in our caucuses. I know the member for Scarborough West (Mr. R. F.

Johnston) wants to ask some questions. He is very supportive of one section of it. I know the member for Bellwoods (Mr. McClellan) has some comments on it. It should be done after the House is in session, so that these people can participate and come into the committee.

Mr. Shymko: If that is the formal decision of the committee to give us time, I can tell you that some of us may have questions. I would suggest that we call the Ombudsman's office for some explanation before we speak to the media.

Mr. Philip: Any one of us can do this.

Mr. Hennessy: Mr. Philip mentioned that other people would be coming to ask questions. The people who are involved--the municipalities, hospitals, children's aid and the public trustee--should be invited. We are getting one side that wants to have a change and, knowing Mr. Philip, he will bring all the people who agree with him. Therefore, we will run--

Mr. Philip: You can bring anybody you want. It is a democratic country.

Mr. Hennessy: I know. I am saying there are other people involved in this. Let us not hear one side of the story; there are two sides to listen to before we make a decision.

Mr. Philip: Bring in anybody your heart desires and I will listen to him and be courteous to him.

Mr. Chairman: Mr. McLean has made a motion, which we have been discussing.

Mr. Hennessy: What is it?

Mr. McLean: It was to put it over for three weeks.

Clerk of the Committee: Mr. McLean has moved that the clerk arrange a meeting of the committee after the House resumes to consider the report on expanded jurisdiction and to invite Dr. Hill to that meeting.

Mr. Chairman: All those in favour of Mr. McLean's motion?

All those opposed?

Motion agreed to.

Mr. Bell: I urge the committee to go on in camera this afternoon when you discuss the public trustee issue. With respect, you can deal more effectively in camera with the issues that are presented to you and discuss possible solutions in terms of this committee's authority in that context than in the public forum.

Mr. Chairman: Mr. Shymko moves that the committee continue in camera at two o'clock.

Motion agreed to.

The committee recessed at 11:45 a.m.

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STANDING COMMITTEE ON THE OMBUDSMAN

ANNUAL REPORT, OMBUDSMAN, 1985-86

WEDNESDAY, OCTOBER 29, 1986



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Staff:

Bell, J., Legal Counsel; with Shibley, Righton and McCutcheon

Evans, C. A., Research Officer, Legislative Research Service

Witnesses:

From the Office of the Ombudsman:

Hill, Dr. D. G., Ombudsman of Ontario

Savage, H., Director of Regional Services

Mills, A., Controller

Meslin, E., Executive Director

Sora, D. K., Acting Field Services Supervisor

LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON THE OMBUDSMAN

Wednesday, October 29, 1986

The committee met at 10:16 a.m. in room 151.

ANNUAL REPORT, OMBUDSMAN, 1985-86
(continued)

Mr. Chairman: Now that we have representatives from the three parties here, we will begin the meeting. I understand some of the members expressed a concern about having further discussion about the closure of the North Bay office. Dr. Hill would like to open with a statement.

Dr. Hill: Do you all have copies of my statement?

Mrs. Meslin: They are just being handed out.

Dr. Hill: Mr. Chairman and members of the standing committee, I appear before you today at your request. However, I welcome the opportunity to respond to your concerns about my decision to close our North Bay office. Once again, let me assure you this decision was an extremely difficult one and was not reached without significant study and discussion with my senior officials. Before detailing my rationale for the decision to close North Bay, it is important to restate my position regarding my commitment to serving the north.

When I met with the then select committee in September 1984, I reminded them, "One of my top priorities when I assumed the responsibilities of Ombudsman was that northern Ontario should be given the same services as those provided to other parts of the province" and that "It is of extreme importance that northern Ontario citizens be aware of the Ombudsman's existence and our services."

In addition, at that time, I also reported to the committee that I had asked Gilles Morin, then my director of regional services, to advise me on how my office might best serve the north. Mr. Morin, with the assistance of staff, was requested to produce a report describing the services provided to the north by the existing regional offices, North Bay and Thunder Bay, and by the Toronto office.

In 1984, we also hired two native summer students to work in our Thunder Bay office. They were trained by our area manager, Mike Dunnill, and were sent to visit 14 reserves in northwestern Ontario to explain the role and function of the Ombudsman.

In addition to my concern about native people, I indicated to the committee that the francophone community in northern Ontario also warranted special attention. Therefore, I directed that at least one staff person in our offices located in northeastern Ontario be fluent in both French and English. I might add it is hoped to increase that capacity in due course.

To provide a co-ordinated regional program that would reach every geographic sector of Ontario, particularly northern Ontario, I seconded Eric

Moody from his position as area manager of the North Bay office to act as chief, regional planning and development. His mandate was to do an in-depth analysis of the methodology and effectiveness of our present regional offices and a demographic study of the geographic areas of the province. He was to place special emphasis on socioeconomic status, ethnicity, age and sex of the population.

I would then be able to use this comprehensive report to assist in the development of a regional plan. The report was completed in February 1985 and presented by Mr. Moody to all senior staff. He was assisted in this study by David Sora, a researcher on my staff. This report formed the basis for my decisions regarding the placement of field officers and stringers and the development of a strong community awareness program in the regions.

In my remarks to the standing committee in September 1985, my continuing commitment to the north was underlined by the establishment of two district offices, one in Timmins and the other in Kenora. Since both areas have large native populations, native district officers were hired, with the officer in Timmins speaking Cree, French and English.

After Mr. Morin left the office to become a member of the Legislature, I hired Harvey Savage as director of regional services. In order to further my regional plan and because fiscal restraints deterred me from continuing to create high-cost regional and district offices, I developed the field officer or stringer concept, utilizing local residents on a part-time basis to serve people in areas previously underserved by our office. By September 1986, when I appeared before your committee, I had established part-time field officers in London, Windsor and Sault Ste. Marie.

As you can see, in my two and a half years as Ombudsman I have increased service to the north by establishing two district offices and one field officer in Timmins, Kenora and Sault Ste. Marie respectively. I think this indicates my concern and commitment to serving the people of northern Ontario. I also hope it illustrates a methodical and reasoned regional program that is currently providing more service to the north than has ever before been provided.

In terms of my overall fiscal commitment to the north, I would like to point out that as a percentage of the total office expenditure estimates, I have increased the amounts allocated to regional services by 7.7 per cent in 1984-85, 8.7 per cent in 1985-86 and 13.8 per cent in 1986-87.

I would now like to detail my reasons for closing North Bay. As North Bay and Thunder Bay are both regional offices, which began operation at almost the same time and which have retained the same area managers over the past number of years, we have tended to measure their production together, this despite the fact that the base population area served by North Bay is 535,000, while Thunder Bay serves approximately 188,000.

Since Harvey Savage's appointment as regional director and the introduction of his community awareness or outreach program, we have been measuring the number of contacts, speeches and meetings conducted in each regional and district office, including the number of telephone calls and personal interviews.

Our community outreach program commenced in January 1986. We began to keep records of all community contacts in March 1986. After the initial

six-month training period from March to the end of August, North Bay had 12 community contacts made, while Thunder Bay had made 35 contacts.

In addition, analysis of the complaint volume from January 1986 to June 1986 indicates North Bay handled 202 complaints while Thunder Bay handled 461. That represents 128 per cent more complaints than North Bay handled during the same period even though, as I mentioned earlier, North Bay's population is significantly larger than that of Thunder Bay. In addition, of the 593 complaints received from our North Bay office in 1985-86, only 48 per cent came from the city of North Bay. The remainder came from areas such as Sudbury, Sault Ste. Marie and Kapuskasing. This is in contrast to the 758 complaints from the Thunder Bay office, of which 80 per cent came from the city of Thunder Bay.

Another important factor in determining the viability of these offices was the move from their high-rise office locations to storefront premises, something I had hoped would increase everything. While located in the high-rise location, the North Bay office received an average of 33 complaints per month, while Thunder Bay received an average of 45. Following relocation to storefront premises, North Bay's volume increased only marginally to 39 complaints per month, representing an increase of 18 per cent, while Thunder Bay's volume increased to 96 complaints, an increase of 113 per cent.

As you can see, a clear pattern emerges when comparing North Bay to Thunder Bay, namely, a declining North Bay office in terms of service and contacts and an expanding Thunder Bay office. Even our new Sault Ste. Marie office, which was established only in July 1986, had 163 complaints and 17 contacts between July and September, with a part-time person working only 22 hours per week.

This disturbing trend was underlined by Eric Moody, our North Bay area manager, at a seminar in Toronto in early September conducted for all the regional services staff. In the presence of myself and the other regional services staff, Mr. Moody, a 10-year veteran, stated the North Bay office had experienced a substantial decline in numbers of jurisdictional complaints received over the past several years.

This is despite the new visible storefront location and despite the implementation of the new community awareness program. Mr. Moody went on to say he had no rational explanation for the steady decline, other than the fact that a saturation point of service had probably been reached in North Bay. He held out no optimism for the future in terms of true growth potential.

During a follow-up meeting with Mr. Savage on September 5, 1986, the morning following the regional services workshop, Mr. Moody expressed his views even more strongly with regard to the North Bay office location. He indicated there had been no rational basis upon which to establish the North Bay office as a northeastern Ontario regional office. He was of the view that at least one other northern Ontario centre would have been a more logical location. He claimed no proper demographic study had ever been conducted to lead to the decision to designate North Bay as the most suitable northeastern Ontario location. This was his surmise of the situation. It became increasingly evident it would be unwise and fiscally irresponsible to continue to operate the North Bay office.

I instructed Mr. Savage to meet with the North Bay staff individually to inform them of my decision to close the office, effective October 31, 1986,

and to discuss other positions within my office or to negotiate financial settlements with them. He was also asked to notify the landlord and discuss possible terms for vacating the premises.

Amicable settlements have been reached with both employees--Pauline Desbiens and Eric Moody--and with the landlord.

My objective has been and continues to be to expand our services, particularly in northern Ontario. To this end, I am having an in-depth analysis prepared to determine where our services might be better utilized in the north.

I fully realize that closing the North Bay office has caused concern to many people, although I should point out I have received no mail, correspondence or telephone calls from any North Bay citizen, other than from the mayor and Mr. Harris, complaining about the office closing.

I previously stated that after closing, in order to assure continued service to the area, I would have a staff member available to meet with complainants in North Bay for two days every three weeks. Not only will the staff person take complaints, but he or she will also undertake additional educational initiatives in the North Bay community.

Since last meeting with this committee, I have carefully considered the members' comments and suggestions. As a result, I have decided to monitor closely the situation over a two-month or three-month period, continue my educational efforts in North Bay and if during that short time it appears more service is required--if things pick up--I will seriously consider hiring a field officer, a stringer, from within the North Bay community to be located and to give service in North Bay for three days each week. North Bay would then have the same status as my operations in Sault Ste. Marie, Windsor and London. That means an active stringer would take complaints and conduct community activities in the area.

I stand firmly by my commitment to serve the north as well as all other underserved regions in Ontario. My decision to close North Bay was premised on my desire to provide service in locations where the need is greatest and to provide fiscal responsibility. I have done this in great conscience and I thank you for your indulgence.

10:30

Mr. Philip: There are four or five themes I want to review with you in some detail. Just to telegraph the direction in which I would like to aim my questions, I would like to look at what studies were done initially to set up the office and what criteria were used. What kind of monitoring system did you or your predecessor have in place to evaluate the effectiveness of that office both from the point of view of cost and service?

I would then like to move in what the cost of a closedown will be and what systems you may have in place to ensure that some of the people in that area are still going to receive some service. Last, I would like to go through with Harvey what procedures are now in place in setting up new offices so we will not have a repeat of what appears to have been not the best use of the taxpayers' money.

I start off with your statement on page 2, in which you say Mr. Morin, with the assistance of staff, was requested to produce a report describing the services provided to the north by the existing regional offices. I gather earlier than that some study would have been done proposing the office. Am I right in saying that would be the memorandum of February 18, 1979, from Gilles Morin to Donald Morand, who was then the Ombudsman? Is that the report that would have initiated the opening of the North Bay office?

Dr. Hill: Yes, it is. When I was here last, I frankly did not know of the existence of that memorandum, because as we looked over the files in Mr. McArdle's office and Mr. Justice Morand's office, we did not see it. We could not find it, but it was in Mr. Dunnill's office in Thunder Bay. We found that memorandum, which I did not know existed, and we saw the statement by Gilles Morin regarding North Bay. That is the memorandum I think you all have now. Mr. Dunnill found that for us.

Mr. Philip: You have no doubt now read that report by Gilles Morin. Are you satisfied there was enough justification in that report to set up the North Bay office in the first place?

Dr. Hill: Mr. Morin can speak for himself. He is over there as the member. I feel Mr. Morin and the staff that developed that memorandum were well intentioned and felt they had given sufficient information to establish a North Bay office. However, I do not consider it a demographic or population study or the kind of study that you are talking about. I do not consider it that type of sociological study that would precede the opening of an office. But there was a memorandum of intention--well-intended--and that was the basis upon which it was set up. If you ask me whether there was a demographic study, as a sociologist I would say it was not a demographic study.

Mr. Philip: If a demographic study had been done, would you agree that the decision might well have been not to open the North Bay office?

Dr. Hill: I would have to see what that demographic study showed. I do not have a true demographic study. It is a bit speculative. It might have or it might not have. As a sociologist, I would have to have seen a good demographic study in order to make that determination.

Mr. Philip: Can you think of any reason why, in the report from Gilles Morin on which this decision was made, there is no study or consideration of servicing Sudbury with an office and possibly servicing North Bay through the Sudbury office.

Dr. Hill: In that initial memorandum?

Mr. Philip: Yes.

Dr. Hill: I do not recall that, but perhaps Mr. Morin can speak to that. In fairness, I cannot speak to what was in his mind at the time. He is the best person to answer that.

Mr. Morin: I am a member of the Legislature. I am not here as a witness. Perhaps if Mr. Philip is genuinely interested in finding out exactly why the office in North Bay was opened, he should ask the former Ombudsman, Donald Morand, the former executive director, Frank E. McArdle, and Judge Keith Hoilett to appear before this committee, and he should put a motion on the floor.

Mr. Philip: We have the person here who wrote the report. I am asking the question. If you are not able to answer the question--

Mr. Morin: I am not here as a witness. If you want that information, ask the former--

Mr. Philip: We can always call you as a witness.

Mr. Morin: I am not the Ombudsman.

Mr. Philip: I am sorry. We can always call you as a witness.

Mr. Morin: I leave it up to the committee to decide.

Mr. Philip: It seems fairly clear that Mr. Morin does not have an answer to that question; otherwise, he would be willing to share it with members of the committee.

Can you tell me what kind of monitoring system was in place from the time when the office was set up? Do you have figures on the number of complaints received in the first year, second year, etc., to the closing?

Mrs. Meslin: Yes, we have figures. We have volume figures and jurisdictional figures from 1979 to closing. Do you want me to list the figures? The difficulty with them is that from 1985 on, or since we developed this new system of counting, it is like counting apples and oranges. There is an overall figure for North Bay between 1979 and 1984, using one way of counting and then fast actions were removed. The figures would only confuse the committee and perhaps lead it to an erroneous conclusion. I can provide them.

Mr. Philip: A fast action complaint would not be in the figures for 1985 except as a separate set of figures? A fast action complaint would be where someone would call up and say he has an unemployment insurance problem and he would be referred to the local legal aid office or the office of the federal member of Parliament because unemployment insurance does not fall under your jurisdiction.

Mrs. Meslin: Right.

Mr. Philip: Prior to that, this simple bit of information was being counted as a case and would go into the statistics.

Mrs. Meslin: No. They would not count it. Earlier on, they were not counted in that manner. We counted them later on.

Mr. Philip: Can you give us a rough idea of how many cases you were dealing with, at least in the first few years?

Mrs. Meslin: Between 1979 and 1984, in the North Bay office, the total volume was 2,510 and jurisdictional complaints represented 1,356.

Mr. Philip: Give me that last figure again.

Mrs. Meslin: In that same time period, there were 1,356 jurisdictional complaints.

Mr. Philip: In five years, there were roughly 1,400 jurisdictional complaints, a jurisdictional complaint being one the office could do something about. I have a two-point question on that. I would like to see how it would compare to the overall complaints in other jurisdictions. In other words, what percentage of the total complaints would be represented by that 1,356? I wonder if we can also cost it. I recognize that working in northern Ontario is going to be more expensive because of geography, but it would be interesting to calculate the average cost of servicing each of those complaints with that of the Thunder Bay office. It would give us some handle on whether there was value for money.

My concern in asking for a breakdown year by year rather than the global figure from 1979 to 1984 is that at some point it may have made some sense for somebody to say: "My goodness, we are not getting very many complaints. There seems to be a pattern here or a problem in this office." There were somewhere in the vicinity of fewer than 300 jurisdictional complaints a year in that office, and 300 divided by 52 weeks comes out to about six a week. Are my mathematics correct? Is it six per week?

10:40

Mrs. Meslin: Yes, but that was then. Our figures are much lower now.

Mr. Philip: Your figures are much lower now, but my concern is that even back then, shortly after you opened the office, you were dealing with only six complaints a week, yet you were keeping this office open. Why has it taken from 1979 to 1986 for someone to say: "There may be other ways to service the people in this area without spending all this money. Since servicing the north is going to be expensive anyway, maybe some of that money can be used in other ways"?

Dr. Hill: Mr. Philip, I cannot answer for my predecessors, Mr. Morand and Mr. Maloney, on that question. I can answer definitively for what happened only from 1984 until now. We have figures, for example, in the past year and the past few months in that respect.

Mr. Philip: Let us start with that because I do not have your predecessors here. In 1984 you took over. At what point did you suddenly become concerned about the North Bay office?

Mrs. Meslin: Immediately. Very quickly after Dr. Hill took over he asked for this report--the northern report you have before you--to be done.

Mr. Philip: The northern report is the one referred to on page 2?

Dr. Hill: Yes. I think you have copies of that.

Mr. Philip: This is exhibit 5. In that northern report, would you agree there is again not a demographic study done?

Dr. Hill: There are no real demographics in that study. I do not know whether I even called for demographics. I left the staff alone to develop the report without my intercession. I said I wanted a complete, thorough report. I did not stress I wanted a sociological document or a demographic study as such.

Mr. Philip: What did you ask for in this report?

Dr. Hill: Essentially, in talking to my staff I said I wanted a report that would tell me the state of things now and where we should be going in terms of developing our services in the north. That was my central question. What should we be doing to develop our services in the north? When I came on as Ombudsman, I made the commitment I would give better service to the north. I turned to my staff and said: "Find out how I can give better service, where it should be and how I should be handling and dealing with complaints. Give me some guidelines so that I can move on to fulfil my commitment." That was the essential question.

Mr. Philip: In this report, I suppose you already had the figures for the North Bay office. What part of that report, if any, would you say led you to the belief the North Bay office should be closed?

Dr. Hill: It was not that report. That was an early report. I had not made that decision at that time. That was a report for my guidance and for my assistance, but at that point in history in 1984, that was not the decision.

Mr. Philip: I get the impression this is a very interesting, narrative, chatty report. You are a sociologist. Would you say this is the kind of sociological report you need in order to make reasonable decisions?

Dr. Hill: Again, I must be fair. I did not ask for a sociological report. There were no sociologists on staff at the time, other than myself. I asked for a report for guidance. I did not ask for sociological or demographic information and did not expect that.

Mr. Philip: When you received the report, were you satisfied with it, or did you feel other studies had to be done?

Dr. Hill: It was helpful because it showed me where I should be locating and some of the things I should be doing. It gave me a mood of the north, for example, which I did not have. It gave me a feeling of what should be going on. It was helpful from that standpoint.

Mr. Philip: I suppose reading Farley Mowat would give you that sort of feeling.

Dr. Hill: It is not a demographic, sociological report because at that point in 1984 when I came on, I did not ask for that.

Mr. Philip: Is it fair to say that having received this report you said, "This is an inadequate report for me to make any kind of decision, and therefore I need further studies"?

Dr. Hill: I needed the central background at the time. I did not look for the definitive report, knowing that would come later when Eric Moody did the second document. I knew the greater detail and the demographics I needed would come later. I needed some guidance. I needed senior people on staff at the time to give me some idea of what was going on.

Mr. Philip: One of the recommendations was the establishment of satellite offices in Kenora, Sault Ste. Marie, Timmins and Sudbury. In the light of your constant efforts to do more and more with very restricted resources, did it occur to you at that time that, from recommendation 5, a demographic study was needed?

Here is a report that is saying, "Look, we have to get out and service all these areas." You say, "Oh, my goodness, if I put a North Bay office at the cost of the North Bay office in each of these centres, I am going to blow the next five years' budget in a year, and it will never be approved, and what do I do about it?" Did recommendation 5 lead you into the need for a more extensive report?

Dr. Hill: Recommendation 5 led me into the need for a report that had more demographics and that was more socio-scientifically oriented, the kind of report that came forth from Eric Moody. The Eric Moody document provided the figures and statistics I needed. In other words, it said to me: "Move on and get more information. That is a good lead. It gives you a good idea of where we should be going and where we should be opening offices. Get more information in more depth and with more research." That is what I did.

Mr. Philip: Dr. Hill, lead me through the documents, if you will. I want to make sure I have all the documents that may be available to members of the committee in order to come up with some kind of rational decision on or impression of this.

Your first document is the Gilles Morin document of February 18, 1979, that says, "Gosh, it would be great to open up an office in North Bay and Thunder Bay." It contains no real statistical figures or demographic figures, yet a decision was made to go ahead.

Dr. Hill: I know of no documents from before that time. I know of no other memorandum before that time relating to this subject.

Mr. Philip: Then we have you taking over as Ombudsman in 1984 and saying, "We have here an office that is costing us \$130,000 a year." Is that what it was at that time?

Mrs. Meslin: It was \$147,000.

Mr. Philip: That is last year.

Mrs. Meslin: No, we are talking about 1984-85. It was approximately \$147,000.

Mr. Philip: You said: "We are getting six jurisdictional complaints a week. Maybe that is not the best way to spend our money." Was that the next stage?

Dr. Hill: Let me put it this way: it started me to thinking.

Mr. Philip: As you started to think, you asked for another study to be done. That study is this nice, chatty document called exhibit 5; or was there a study between those?

Dr. Hill: No. The northern study was the first document done by my staff, including Mr. Morin, for me. After that, when I started thinking and getting some concerns, the major document--

Mr. Philip: Let me stop you there. The northern study is exhibit 5, is it not?

10:50

Dr. Hill: Yes.

Mr. Philip: That is the second document.

Dr. Hill: That is right.

Mr. Philip: That was commissioned after you started to say, "We are spending an awful lot of money."

Dr. Hill: No, it was after I said I wanted to know how I could give better service in a better way to the north. As the new Ombudsman, I wanted more guidance in how to give service. That is the basis upon which that study was done.

Mr. Philip: Exhibit 5, then, is--

Dr. Hill: How we do it.

Mr. Philip: It preceded your twigging to the fact that you were spending an awful lot of money.

Dr. Hill: Yes.

Mr. Philip: Exhibit 5 does not really deal with the cost-effectiveness of any of the offices. Is that correct?

Dr. Hill: In fairness, I did not ask for a cost-effectiveness study or for a demographic study.

Mr. Philip: At what point did you become concerned? You had this study, exhibit 5, that said: "Yes, all kinds of people out there need help. There are different groups and different languages and so forth. Our people are working hard out there, etc." That is all narrative. At what point were you concerned in a fiscal manner about this?

Dr. Hill: After I received the northern report, I wanted to know more definitively how I could give service throughout the north, and in a much broader and better way. I became concerned about the offices being in tall buildings and not in storefront locations. I am a storefront-oriented person. I felt better service could be given there. I said if I had a good report across the board--all over, demographically, regional--then I would have a better idea whether to go to storefronts, whether I should stay in those high-rises, whether I was paying too much money or what I should be doing. That is what predicated the second major study.

Mr. Philip: What is that second major study? Do we have that?

Mrs. Meslin: You do not have a copy of it. It is a large study. We can have the clerk copy it for you.

Dr. Hill: It is easily available.

Mrs. Meslin: It was submitted to Dr. Hill in February 1985. That is the study that was done by Eric Moody.

Mr. Philip: That is the Moody study.

Mrs. Meslin: Correct.

Mr. Philip: How do I go to the next stage of seeing whether your decision makes some sense--indeed, whether future decisions make any sense--if I do not have an opportunity to go through the Moody study? Do you agree it would help us to understand your decision?

Dr. Hill: I think you should see it. You would see a continuity in historical pattern. You should have the document. It is easily available, but it is so huge that I did not want to duplicate it for every member. However, it can easily be made available.

Mr. Philip: You might table one copy with the clerk.

Dr. Hill: I think we have.

Mr. Philip: Do we have it?

Mrs. Meslin: No, the clerk does not have it.

Dr. Hill: That is easy to do.

Mr. Philip: Since I do not have the Moody study in front of me and since none of the members has seen it, can you summarize it or can Mr. Savage summarize the details of it?

Mr. Savage: The Moody study, as I read it, was not intended to do a strict comparative survey of all the existing offices from a cost-benefit point of view. Rather, it was aimed at how best to reorganize the regional services. At that time, I think Dr. Hill was interested in reorganizing the whole approach to regional services. In part, it tied in with an idea to use the stringers, these part-time field officers.

The study focused upon such things as volume of complaints from different parts of the province and from different towns where we do not have services--Kapuskasing and Sault Ste. Marie then, not now, and places such as those--with a view to seeing where we could best put some of these part-time people. A lot of it was focused upon that.

In all fairness, and I think I can speak for Dr. Hill, that report was not the most critical component behind the decision to close down the North Bay office, although some interesting statistics concerning complaint case load can be pulled from it.

Mr. Philip: Did the statistics in the report lead you to put your antennae up and say: "Maybe we have a fiscal problem with the North Bay office. We are paying a lot of money and providing very little service"?

Dr. Hill: It is more than that. When we brought on the new regional director, he started making the trips, looking at statistics, going behind the reports, interviewing people, looking at the extent of the outreach programs and looking at monthly statistics and informal and formal complaints. It was with the advent of the new regional director that an intensive effort was made to put the microscope on each of those offices.

Mr. Philip: We do not have the Moody study in front of us, so I will have to rely on your knowledge of it until we get an opportunity to study it. Is it fair to say that study basically came up with less expensive ways of servicing more people than in the past? Is that a reasonable conclusion?

Dr. Hill: It came up with what were thought to be less expensive ways, but as the Ombudsman I questioned some of those. I decided there were even better ways than were manifest in the Moody study. For example, the idea of a field representative or a stringer was not manifest in that study. That was my idea. I got it from newspapers and newspaper people. I figured this was a better way to serve the province. You just could not pay for district and regional offices. The Moody study did not have that idea; that was my idea that I developed on my own.

Mr. Philip: Is it fair to say the Moody study at least says: "The way we are doing things may not be the most cost-effective; here are a bunch of processes we should be looking at to reach more people, handle more cases and spend less or equal money"?

Mr. Savage: We have to understand what the Moody study said and did not say. The Moody study was largely descriptive.

Dr. Hill: It was a survey.

Mr. Savage: It set out a lot of different statistics about where complaints were coming from in different parts of the province and explored a whole range of little towns and some urban centres where it might be possible to expand in the future. I do not think the Moody study was a comprehensive critique of where we ought to be going or whether we should close this or that down. That is why I do not think we can look at the Moody study as being critical to our decision.

Dr. Hill: The Moody study gave me the first comprehensive survey with data and demographic and other profiles of communities, things of that nature, upon which I could make decisions. I did not have to agree with the Moody study. As a social scientist, I needed that base information to make certain decisions on where we should go next. That is what that study did. It was the first comprehensive study of that type done in the Office of the Ombudsman.

Mr. Philip: The Moody study was still a predemographic study.

Mr. Savage: It is a demographic study of its kind, but it does not supply the kind of hard data that, in the end, we used to close down the office in North Bay.

Mr. Philip: Okay. Perhaps you can take me to the next stage then. With the Moody study you became aware of certain statistics, and you said: "Maybe we have to look a little harder at this. Maybe we need some more data. Maybe there are some problems in how we are servicing the north." Lead me to the next stage. Where did you go from there?

Mr. Savage: The next critical stage was in early 1986, last winter, when the decision was made to go to storefronts in the two northern regional offices, Thunder Bay and North Bay, at approximately the same time. There might have been a one-month difference. The critical factor is to look at what happened before in each location and then at what happened after, during this past August or September. The difference is staggering.

We started with the common ground that increased visibility and exposure should logically work to the equal advantage of both offices, since both were tucked away in invisible locations before. In fact, if you look at their case loads, they were not all that far apart before; there was not that much margin

of difference. For instance, from January 1, 1985, to June 30, 1985--this is before the storefronts--Thunder Bay processed approximately 188 complaints. In that same period, North Bay processed 172 complaints. There is not much of a difference.

11:00

Mr. Philip: These are jurisdictional complaints.

Mr. Savage: Yes. The critical difference was that after the storefronts, we did further studies, including statistical case load studies. To give you an idea, from January 1, 1986, to August 31, 1986, most of it occupied by the storefront period, there were 677 cases or complaints in Thunder Bay. In North Bay for that same period there were 269, which is an extremely significant difference.

That was not the only reason. There were other factors as well. There were far fewer community contacts for the same period in the North Bay office compared with the Thunder Bay office, bearing in mind that the population base served by North Bay--I do not mean the city itself, but the base--is approximately five times that of Thunder Bay. After we went to the storefront locations, Thunder Bay was significantly greater than North Bay in terms of community contacts as well as case load statistics. Combine that with the statement made by Mr. Moody to me and in the presence of other regional staff at our seminar that North Bay is basically saturated--in his words; is in a no-growth situation--and we had gone as far as we could possibly go.

Mr. Philip: I do not know the principals in either office; I am not friends with either of them, so I am not asking a judgemental question. Would you not agree it could be a staffing problem in one office compared to the other? In other words, if someone gets out and does a community development type of job, he will generate more business for the office than someone who sits there and waits for someone who has problems to come to him. I do not know your staff, other than possibly having met them at times.

Dr. Hill: Both were 10-year veterans who knew their communities. Eric Moody knew his community; he knew North Bay upside down, and I had to listen to him. Mike Dunnill is a 10-year veteran in Thunder Bay. They were not neophytes; they were seasoned professionals.

Mr. Philip: They were doing the equivalent job?

Dr. Hill: Yes. That is the only way I can answer. They were not neophytes. Mr. Moody knew North Bay. He made these comments and offered these considerations. Neither he nor Mr. Dunnill was a neophyte.

Mr. Philip: In looking at these two offices and comparing them, as inevitably you did, did you, as a sociologist, take into account any variables such as linguistic or cultural differences, geography and so forth?

Dr. Hill: We certainly considered them.

Mr. Philip: You could not find any major factor that would have influenced one over the other?

Dr. Hill: No, I cannot say that.

Mr. Philip: Was Mr. Moody the area manager for the North Bay office?

Mr. Savage: Yes.

Mr. Philip: On his own recommendation, he has done himself out of a job. Is that correct?

Mr. Savage: I do not think he recommended that we do him out of a job. He made an honest and frank statement in front of a number of staff that there had been a substantial decline in the past few years in North Bay in jurisdictional complaints. "Substantial" was his word. He did not hold out much prospect for any improvement. In part, we acted on that statement. We also had the results of our independent monitoring over the six or seven months before that, which really confirmed his statement. It was not startling information to us.

Dr. Hill: That was a critical period in 1986, as we were monitoring the case load statistics and evidence of what went on. Then Mr. Savage came on, which made a big difference to us.

Mr. Philip: Let us get down to the bottom line, as we say in the standing committee on public accounts. The bottom line is what it cost to operate that office, and more particularly, how much it cost per case. You are getting a little more than one case per day if you are getting an average of six per week.

Dr. Hill: Our controller will give you some statistics and information on that.

Mr. Philip: You would think your staff would die from boredom in those kinds of situations. It must be a great place to catch up on reading novels or writing a master's thesis.

Dr. Hill: This might also relate to the question raised by Mr. Harris. We have some responses on finances per case. Do you want to tie those together, Mr. Mills?

Mr. Mills: To address Mr. Harris's question first, the total cost of operating the North Bay office between January 1980 and September 30, 1986, was \$928,000.

You were also asking about costs per case. We collected data for the period after the offices had moved to the storefront locations.

Mr. Harris: Of what relevance is the figure of \$928,000?

Mr. Mills: I am responding to your question.

Mr. Philip: I would be more interested in using the figure you have for the last fiscal year, which I gather is approximately \$148,000.

Mr. Mills: In the current fiscal year it is \$110,000. In the 12 months ended March 31, 1986, it was \$117,000.

Mr. Philip: It is costing roughly \$120,000 to service one case per day on average. For the total for the year, what does that work out to per case?

Dr. Hill: You have to use a calculator. Just a second.

Mr. Philip: I can do that too.

Mr. Harris: Do you have the number of complaints for that period? You are now giving a figure of \$117,000 for the fiscal year ended March 31, 1986. Do you have a corresponding number of complaints for that period? You have figures for six years, eight years, six months and 12 months.

Mr. Philip: That is what I am trying to get at.

Mr. Harris: Can you give me the number of complaints he is punching into the machine?

Mr. Mills: It is 400 in 12 months.

Mr. Harris: For the 12 months ended March 31, 1986, there were 400 complaints.

Mr. Bell: And \$108,000 for the year?

Mr. Harris: And \$117,000. Do you have that figure?

Mr. Mills: Do you mean the resultant figure?

Mr. Harris: Yes.

Mr. Mills: It is \$292.50.

Mr. Philip: It is costing \$292.50 per complaint.

Mr. Mills: In that 12-month period.

Mr. Philip: Do you have comparative figures for the Thunder Bay office?

Mr. Mills: Yes, I have some.

Mr. Harris: For the same period?

Mr. Mills: Yes. I should tell you I do not have Thunder Bay estimates figure. I have the complaint figure, if that is of interest to you.

Mr. Philip: You must have some idea. Mr. Savage, do you know how much it costs to operate the Thunder Bay office?

Mr. Savage: I have the more recent figure on Thunder Bay. Actually, I have the Thunder Bay cost per complaint received. This is for a four-month period in 1985. It is a comparison we had done in another study. I will give you the figure over a four-month period.

Mr. Harris: May I ask what relevance that has?

Mr. Savage: North Bay is compared for the same period; that is why.

Mr. Harris: Then give us those figures. You have given us some figures for the March 31, 1986, fiscal year. Do you have that for Thunder Bay?

Mr. Savage: Not for 12 months.

Mr. Philip: We could take the four-month figure.

Mr. Savage: I will give you the four-month figure and the contrast.

Mr. Philip: Later, you can calculate the other.

Mr. Savage: Yes. This is for 1985 before the storefront locations: \$233.24 per case. After the storefronts opened, in Thunder Bay, from January 1 to August 31, 1986--

Mr. Bell: This year?

Mr. Savage: Yes, this past year.

Mr. Bell: It is apples and oranges.

Mr. Harris: You either have the figures we can compare or you do not.

Mrs. Meslin: He is trying to give you figures you can compare. We have figures you can compare.

Mr. Savage: I am trying to show how it went down after the storefronts.

Mr. Bell: Why did you change your statistics?

Mr. Harris: The question concerned the March 31, 1986, fiscal year. You throw those out for one; now you have something else for four months in a different period after it. Do you add apples to apples or do you not?

Mr. Savage: I am sorry. It is for the same four-month period in 1986. Thunder Bay went down to \$116.02 per complaint.

Mr. Philip: If we do a comparison, the North Bay office was costing you more than twice per complaint compared to the Thunder Bay office.

11:10

Mr. Bell: I do not want to throw anybody off, but this is getting dangerous. This presumes everything that comes in the door is going to cost the same amount. You are just taking a simple global amount and dividing it by a simple global total expense.

Dr. Hill: Yes, and there are problems with that.

Mr. Bell: I want you to make sure, to Mr. Philip and us, that the period you are talking about is the period after you changed your computer recording provisions, whereby for statistical purposes you now count everything that comes in the door, whereas you used to count only those things wherein files were opened. Otherwise, unless we know all the factors, I do not think we can make any meaningful comparison.

Mr. Philip: The \$292.50 is using the new statistical collection.

Mr. Bell: I do not know.

Mr. Harris: I suggest it is not, because it finishes at the end of the fiscal year, March 31, 1986.

Mr. Savage: This might help. I think you are right--it is a point well taken--but we have the same four-month periods for both offices. There is a control there in that sense; they are both subject to the same computer changes. During that four-month period--1985 four months, compared with 1986 four months--North Bay goes from \$243.48 per complaint in 1985 to \$233.84 in 1986.

Mr. Philip: So for the exact same period, using the exact same statistical collection techniques, it is \$233.84 in Thunder Bay as compared to \$116.02 in North Bay.

Mr. Harris: What was the \$243.48?

Mrs. Meslin: That was 1985. We were looking at 1985 and 1986 comparable periods for both offices.

Mr. Harris: Okay. If you are going to play this game with numbers, you had better clarify them.

Mr. Savage: We are not playing games.

Mr. Harris: You gave us a figure of \$292.50 for North Bay for the fiscal year ended March 31, 1986. Now you have another figure for 1985. I assume you are referring to the calendar year 1985 and you are saying it is \$243.48.

Mrs. Meslin: It is not the calendar year.

Mr. Savage: Can I just clarify this? During the springtime, as one of the monitoring devices, I took a four-month period, from March 1, 1986, to June 30, 1986. It was my own study. I had a look at the cost per case in both those offices for the same periods of 1985 and 1986. Both those offices are subject to the same basic conditions, and those are the comparative figures.

Mr. Harris: Can you give me the 1985 and 1986 figures for both offices?

Mr. Savage: First, for Thunder Bay, from March 1 to June 30, 1985--

Mr. Harris: No. I asked for the figures for the fiscal year ended March 31, 1986.

Mr. Savage: I do not have those. I am just giving you the study I did. This is my own study.

Mr. Harris: I thought you told me you had both. I am sorry.

Mr. Savage: I just told you I did a four-month--

Mr. Harris: I understand that you have the four-month figures. But somebody refers to 1985, somebody else mentions the fiscal year 1985-86--

Mr. Philip: We can collect the other later, and I am sure you can supply it to us, but what we do have amounts to a snapshot of four months--they are the same four months--using the same data collection procedures. In that snapshot of those four months, comparing the Thunder Bay and North Bay offices, we get a figure of \$233.84 per case for North Bay, compared with \$116.02 for Thunder Bay; that is roughly twice the cost of operating per case.

Admittedly, it is only a four-month snapshot, and you should be able to work up a larger snapshot for us and get it to us if any member of the committee feels that is useful. I think that is the direction Mr. Harris wants.

Dr. Hill: That can be done.

Mr. Philip: You have been able to show two comparisons for four months; let us have it for the whole year, and we will see what it is actually costing.

Dr. Hill: We have it. We are computing it now for you.

Mr. Philip: Perhaps we can get back to that later when you have it.

Is there any identifiable difference in the type of cases you would have in the Thunder Bay office as compared to the North Bay office? For example, if you open an office in North York, I am sure your costs per case would be considerably heavier because of the heavy workers' compensation load, a lot of the people living in North York being in the construction trades, than if you opened in downtown Toronto where the people are in the office trades.

Dr. Hill: There are actually more native people in Thunder Bay and fewer in North Bay in terms of complaint load.

Mr. Philip: Does that increase or decrease the complexity or difficulty of servicing the complaint?

Mr. Savage: It does not increase the complexity of it necessarily. In my judgement, it does not increase the complexity. In fact, some of the non-native complaints are more complicated.

Mr. Philip: There is no real reason to believe the complaints in North Bay are any more complicated and therefore should deserve extra financing than the ones in Thunder Bay?

Mr. Savage: No reason.

Dr. Hill: Not that we can see.

Mr. Philip: We then go to the next demographic study or the next study--

Mr. Harris: I am not trying to direct the affairs of the committee, but I have quite a number of questions I would like to ask. How long does the committee go? Are we going to have another meeting on this? If it goes to 12 o'clock, I do not have enough time now.

Mr. Chairman: I think we will be going to 12:30 p.m., and we can have another meeting.

Mr. Philip: I am willing to give up the floor to Mr. Harris. I think I was going in the direction in which he probably wants to go, and I do not mind if he asks the questions rather than me. But one of the things I want to get at is what the next study is in terms of demographics. How are you going to decide where the offices are? Why was North Bay closed down before you had your studies in place? What were the considerations there? What are the cost factors in closing down the office? How much is it going to cost us to get out of the lease, to pay off staff and so forth?

Those are the directions I am going in. I think Mr. Harris wants to have the floor then. He might want to explore those avenues, and I will be perfectly happy to let him ask the questions.

Mr. Harris: Okay.

Mr. Chairman: Mr. Bell has one question he would like to ask before Mr. Harris.

Mr. Bell: Just if it will assist; I am not sure where the statistical exercise is taking us because of all the variables.

Dr. Hill, with your permission, can I ask Mr. Mills a question?

Dr. Hill: Yes.

Mr. Bell: The reason being--and I think I can call you Al after 10 years--you have lived through all the statistical computer development within the office, and you know the database, historical and otherwise, with respect, better than anybody in this room. Frankly, I value your candour when you are asked tough questions, and perhaps this is a tough question.

If the exercise today is to get some focus and handle upon the decisions to keep open or not to keep open the office in North Bay, is the committee at all assisted in forming any conclusions on that basis by any statistical analysis on a comparison basis between Thunder Bay and North Bay or North Bay and Toronto? Can you draw any real conclusions necessary and important for Dr. Hill's purposes in deciding whether to keep that office open?

Mr. Mills: First of all, I think the number of complaints received is down. There is no getting away from that. It is down in spite of an attempt to gain greater exposure for the office by moving to a storefront location. In that light, and in the light of the fact that the number of complaints is down despite moving to a locality where you would expect greater exposure, it would seem to me that Dr. Hill would be justified in looking at less costly ways to service that area of the province.

Mr. Bell: I will have some questions later.

11:20

Mr. Harris: I would not mind getting an answer. You have not answered the question. You have come up with a different rationale from the question that was asked. Is there any value in your providing the statistical numbers of cost per case? Is that going to be of benefit to this committee in determining whether an office should stay open or closed? That is the question, and not the other rationale.

Mr. Mills: Cost per case, no; statistics, yes. In other words, I think the number of complaints is a relevant factor.

Mr. Harris: Okay.

Mr. McLean: Before you start, Mr. Harris, I would like to get a clarification about the changes that have been made with regard to a complaint. Is it a written complaint, or is it somebody who walks through the door to complain? How is a complaint justified?

Mrs. Meslin: A complaint fits into a number of categories. It can be either a written complaint or a telephone complaint, or it can be someone coming in the door. It can be jurisdictional, and it can be nonjurisdictional.

Mr. McLean: Stop right there. If you get a complaint by telephone, that is recorded as a complaint and goes no further. Is that right?

Mrs. Meslin: Not necessarily. If we get a complaint by telephone--

Mr. McLean: It may go further, but it may not.

Mrs. Meslin: That is right; just the way a written complaint may not either.

Mr. McLean: If you get a phone call, is that classified as a complaint in your statistics.

Mrs. Meslin: Unless it is just someone phoning and saying, "Is this the place I come to for complaints about unemployment insurance?" There is a distinction. You have to look at what the person is talking about. If a person phones and says, "Workers' Compensation just turned down my appeal; I would like somebody to do something about it," that is a complaint. We say, "We will make arrangements for someone to see you," etc.

Mr. Harris: I would like to go through some of the reports as well. I would like to spend some time on them. I have concerns about the cost per complaint statistic and how relevant it is. However, if it is relevant, I point out that using a new base and using everything coming into the office, Thunder Bay appears to be busier than North Bay, and that brings down the cost per complaint. Using the same argument, it appears as though North Bay is more efficient than every other office, other than Thunder Bay, and nobody is suggesting we shut down Toronto--although I may get to that before I finish, probably not today but at a future meeting.

Dr. Hill: We have an answer--

Mr. Harris: You had an opportunity to give a statement to answer the questions; if you have more you want to give, fine.

Dr. Hill: We would like to respond to the point about Toronto being more costly than North Bay. You have made that point, and it is in Hansard. We have worked that out; if Mr. Mills could give a response to that, we would appreciate it. It is a very important question.

Mr. Mills: First of all, Mr. Harris, your calculations are arithmetically correct, but I believe they are misleading to the extent that the total costs of operating our office include expenditures for common services or overheads. To derive a comparable figure, those costs have to be subtracted from the total estimates, which you have used in making a calculation. When that is done, the cost per closed complaint is \$291 and not \$425.

Mr. Harris: That is still a little higher than North Bay. But what is the figure you are pulling out for common costs?

Mr. Mills: I will start with the total estimates of \$6,052,000. The figure I am subtracting, which represents common costs or overhead costs, is \$1,914,500.

Mr. Harris: A third of your budget, \$2 million, has nothing to do with resolving complaints. Is that correct?

Mr. Mills: I did not say that.

Mr. Harris: What are you saying?

Mr. Mills: I am saying there are certain common services that have to be funded.

Mr. Harris: And we cannot use those costs in actually calculating any complaint that is--

Mr. Mills: They are not front-line troops; put it that way.

Mr. Philip: May I ask a supplementary? Is it not fair to say that workers' compensation complaints would be a higher proportion of your case load in Toronto than in North Bay?

Mr. Mills: The investigation of workers' compensation complaints is done in Toronto.

Mr. Harris: It is all done in Toronto?

Mr. Mills: Except when people have to go out to visit a complainant in the regions.

Mr. Harris: Even though Sudbury is now handling northeastern Ontario for the WCB complaints, it is still all done in Toronto?

Mr. Mills: Except when someone travels.

Mr. Philip: Is it not fair to say that with the exception of a Pickering kind of problem, the cost of servicing a WCB complaint is higher than the cost of servicing most other complaints in terms of hours spent?

Mr. Mills: If I were to generalize, and I believe generalizations are dangerous, I would agree with you, because the duration of closing is generally much longer.

Mr. Philip: And with the new tribunal system, it is probably increasing even more dramatically because it is much more legalistic in its approach.

Mr. Mills: I have noticed that the duration to closing of WCB complaints is up, yes.

Mr. Philip: At your stage; the stage at which you get it. It may be decreasing elsewhere.

Mr. Harris: I guess it all started from your question, Mr. Philip, that the proportion of WCB cases is higher in Toronto or in other offices than it is in the North Bay office. You have not answered that. Is it?

Mr. Philip: He said yes.

Mr. Mills: I said yes.

Mr. Harris: The proportion of WCB complaints is higher in other offices than it is in--

Mr. Mills: It is higher in Toronto than it is in the other offices, because Toronto does the investigation of WCB complaints except and unless a visit is necessary.

Mr. Harris: But I do not think you are saying the same thing. What you are saying is that in terms of the effort expended on a WCB complaint, regardless of where it originates, the money is spent in Toronto. I do not think that is the question. I thought the question was whether the intake of complaints is higher with respect to WCB than it is elsewhere.

Dr. Hill: Yes. That is the answer for that. It is in Toronto.

Mr. Harris: Thank you. I want to go through your statement and ask you a few questions and then get to some of the others. I have a few points on your statement, Dr. Hill. Let me ask you, as I get into this, what is a demographic study?

Dr. Hill: A demographic study gives you the population statistics of a particular geographic area. Depending on how you want to cut it, it gives you information on housing, ethnic groups, socioeconomic status and economic matters. It profiles the area you are going to do on the basis of certain economic, financial, population and age factors--things of that nature. It gives you the demography of the area, based on social characteristics.

Mr. Harris: Can you tell me briefly how relevant that is to determining where the Ombudsman's services should be provided versus just a simple population number?

Dr. Hill: It is very relevant in terms of the community outreach efforts. If you know 70 per cent of the population in a particular area are native people, francophones or whatever, then you can gear a more effective program based on the statistics of that area. In other words, if you have an area where you are dealing with native people or francophones, you want to make certain you have people who can serve that population group.

Mr. Harris: I understand that. Would you expect, though, that there would be a higher percentage of complaints if the demographics showed there were more native people or more French-speaking people?

Dr. Hill: Not necessarily.

Mr. Harris: So it really does not matter. The demographics would determine whether the person is bilingual or trilingual and has some expertise in those areas. Would that be fair?

Dr. Hill: Especially with outreach.

Mr. Savage: May I add a little for clarification? Where it is important is in the degree of organization of community groups in an area. A centre might not have a lot of various community groups, by which I mean groups representing a number of areas such as labour, the handicapped, women, visible minorities and so on. But if there is a fairly large base of those kinds of groups, obviously you are going to have more potential for active community outreach, for exposure of the office, with those groups, under our new system of community outreach, and perhaps the greater potential for impact

upon your increased case load through referrals of that type of approach, which is what Thunder Bay is showing us, and Ottawa now as well.

If you have a centre that is greater than another centre in that area, then you are going to look carefully at the two centres in a comparative way. In that respect, the study of the organizational base of the community is relevant.

11:30

Dr. Hill: Or if a demographic study shows a community is homogeneous and there are not any great differences, that is important as well. Both factors have to be worked out.

Mr. Harris: I am going through the report before I get into the other things so I do not miss anything I flagged and wanted to comment on.

On page 5, you say: "Fiscal restraints deterred me from continuing to create high-cost regional and district offices." What were those fiscal restraints?

Dr. Hill: Lack of money.

Mr. Harris: Did you have problems getting money?

Dr. Hill: I wanted to do more things educationally and in the community without going to the Board of Internal Economy and asking for more money. There had been some criticism of the office in the past, that we were high-spending and high-flying. As the Ombudsman, I had determined to come in and implement programs as best I could without asking for another nickel.

Mr. Harris: They were self-imposed then.

Dr. Hill: Yes, they were.

Mr. Harris: They were not imposed by the Legislature.

Dr. Hill: They were not imposed by the Legislature, but I had a feeling that if I went for it, I would never get it. Therefore, I did it internally.

Mr. Harris: Did you get a feeling that if you wanted to pull staff and resources out of the investigative part of the way the Ombudsman traditionally operated and to put those resources into more of the outreach programs, you would not get that from Legislature? You pulled people off their existing jobs--

Dr. Hill: Some.

Mr. Harris: --terminated those positions and then created the new positions.

Dr. Hill: Some of that was applicable, whenever I thought I could do it without harming the general program of complaint receipt.

Mr. Harris: At the bottom of page 8: "Our community outreach program commenced in January 1986." There appears to be a fair difference in the number of complaints vis-à-vis Thunder Bay--I am not sure about the rest of

the province, but we will get to that--and therefore in the cost of handling those complaints once the community outreach program commenced in 1986.

You have said in answer to some questions from Mr. Philip that you did not see anything different in the North Bay office versus the Thunder Bay office; they both had senior people, and they both moved to storefront locations. Yet at the bottom of page 8 you appear to be very critical of the fact that in spite of having one fifth the population, North Bay made only 12 community contacts while Thunder Bay made 35. Therefore, in community outreach, if I can use the multiple of five you have used, Thunder Bay was making 15 times the community contacts that North Bay was. Is that correct?

Mr. Savage: Yes.

Mr. Harris: You have said you cannot see any other factors that would account for the fact that Thunder Bay went up so much more significantly than North Bay. Would this not jump out at you as a glaring reason?

Mr. Savage: The glaring reason to me gets back in part to demography. I am somewhat familiar with the northwest, having lived there for a few years during the early 1970s. I know that Thunder Bay and the surrounding community is a fairly well organized area in terms of community groups; there are a lot of different groups. It seemed to me there was not the same amount of play in North Bay to do community outreach as there was in Thunder Bay, and this became apparent in the statistical comparison.

When you look at other offices beyond Thunder Bay, Ottawa had many more than North Bay during that time, and Ottawa was a bit of no-growth situation itself until we hired someone who did more community outreach.

Mr. Harris: So you have concluded that the outreach was done but that there was nowhere to reach out to.

Dr. Hill: This is what Mr. Moody meant when he said he felt that the Office of the Ombudsman had reached the saturation point in North Bay. That is exactly what he was driving at when he said it was saturated and there was nothing else we could do.

Mr. Harris: Perhaps now is the time for me to ask a question, and I will come back to it later. Mr. Savage, would you say that Mr. Moody had the same philosophy of approach towards the Ombudsman's office that you have?

Mr. Savage: That is a broad question. We certainly agreed in some areas and we may have disagreed in other areas. I am not sure there was a fundamental disagreement. I always found Eric to be a very frank, forthright person; I still do. I do not think there were any serious disagreements. He was in the office longer; I came in last December. I came in with the new, very aggressive, community outreach approach. He might have been used to one particular style or approach towards doing things, which is only logical; so was Mike Dunnill, for that matter. He was also in the office long before I was, and both of them had to operate under the same community outreach approach.

I do not think there were any glaring, fundamental differences between Mr. Moody and me. To be fair, there might have been some differences. Perhaps his approach to community outreach was not exactly mine, but I could say the same thing about Mike Dunnill.

Dr. Hill: I should add to that for your clarification. This is essentially my philosophy that I more or less dealt with when I came in as Ombudsman. As you look across the whole Ombudsman's office, a lot of people did not know, or were not acquainted with, the outreach concept of moving into the community and making yourself better known. They did not disagree with me; it was just new and different, and they had to get accustomed to it and learn how to work with it. Having learned what it was all about, they entered into it eagerly. It was unknown; it had not worked that way before and it was something different--not only in North Bay and Thunder Bay but across the board.

Mr. Harris: But you will acknowledge that on the bottom of page 8 it appears as though 15 times the number of contacts in outreach were being made in the Thunder Bay office versus the North Bay office.

Dr. Hill: Yes.

Mr. Harris: On page 9 you say: "In addition, complaint volume from January to June 1986 indicates North Bay handled 202 while during the same period Thunder Bay handled 461...as I mentioned earlier, North Bay's population is significantly larger than that of Thunder Bay."

This is the part I am interested in, so I can come back to it later as well: "In addition, of the 593 complaints received from our North Bay office in 1985-86, only 48 per cent came from the city of North Bay." The word "only" seems to imply that more should have come from the city of North Bay. Can you give me the population of the city of North Bay?

Mr. Savage: You are more familiar with that. I just thought I would clarify what "only" meant in that context. It is in the same paragraph in which Thunder Bay is compared. For the same period, 80 per cent of the complaints came from the city of Thunder Bay and 48 per cent came from the city of North Bay. I do not think the "only" has any significance other than to underline the comparison.

Mr. Harris: It does to me, so I am going to pursue it. It says that 48 per cent of the complaints came from a population of 51,000. What is the total population served by the North Bay office?

Mrs. Meslin: It is 535,000.

Mr. Harris: What we have now when we are talking about North Bay--and the angle I will be pursuing later is whether North Bay is a good place to have an office to service 500,000 people--is that one tenth of the population is providing you with about half the complaints. Is that correct?

Mr. Savage: Yes, but we are missing the other half of the complaints with the other 400,000 people around it.

Mr. Harris: You are missing them? In what way?

Mr. Savage: We are missing them in the sense that only 48 per cent came from the city itself. Perhaps another location that was closer to the other 52 per cent could catch them more directly. I am concerned about that.

11:40

Mr. Harris: The figures mean to you that more offices are needed in northern Ontario communities to get closer--

Mr. Savage: Or a more appropriate office.

Dr. Hill: Or a different approach.

Mr. Harris: I get mixed up with time frames because you are very loose with 1985 and 1985-86. During this period, Sault Ste. Marie and Timmins offices opened up. Did that affect the number of complaints received in North Bay?

Mr. Savage: Sault Ste. Marie opened up about three months ago, in July 1986. The Sault office would not have had much of an effect on the period we studied.

Mr. Harris: When did Timmins open?

Dr. Hill: I do not have the date in front of me. We will have to dig to find the exact date.

Mr. Harris: Every time I talk about North Bay, you come back to this great four-month comparative study. Can you confirm that Sault Ste. Marie and Timmins were both open during most of that four-month period?

Dr. Hill: No.

Mr. Savage: No, not at all. Sault Ste. Marie came on in July 1986. The four-month period ended on June 30.

Mr. Harris: Okay, but Timmins was operational then.

Mr. Savage: Yes, Timmins was. I am not sure when Timmins was opened up. I was not around then so I cannot remember.

Mrs. Meslin: For your clarification, during the four-month period you are speaking of, Timmins had its district officer, the only active person, on sick leave. We were sending someone up sporadically, so it cannot be compared.

Mr. Harris: I will go on to your report, but it disturbs me that North Bay has come into question, in the Ombudsman's mind, as being the correct location to deliver a regional service to 500,000 people, despite the fact that 50 per cent of the complaints come from the 10 per cent of the people in the North Bay office. You seem to think that is a negative, and that everybody having to call Toronto is going to be better.

Had you come to me and said, "We need an outreach office in Kirkland Lake, we need a stringer in Kirkland Lake, we need one in Sudbury, we need one here," it would make sense to me. It does not make sense to say: "We are getting too many from North Bay in this region, so we will shut it down. That will level it out. Make them call Toronto," and that is how it appears.

Mr. Savage: Let us clarify the statistics. As you say, about 50 per cent came from the small centre, from 10 per cent of the whole population base, but we are proceeding in absolute numbers from a very small case load. It can be 50 per cent of 5,000 or 50 per cent of 400. There is a huge difference.

Mr. Harris: I have some things to table later that talk about the case load in a different light from that, but that is how it appears to me.

On page 10, it says, "Following relocation to storefronts, North Bay's volume increased only marginally to 39 complaints per month, representing an increase of 18 per cent." All I have heard you say about North Bay is that the number of complaints are dropping off drastically. Do you mean it is not going up as fast as Thunder Bay?

Mr. Savage: One of the critical parts of looking at our office is how many jurisdictional complaints there are in the context of the total number of complaints. In the past few years, there has been--Allan might have some statistics on this--a steady, marked decrease in jurisdictional complaints in North Bay. It is a very critical problem.

Mr. Harris: According to the statistics you gave us earlier, it is absolutely the opposite.

Mr. Bell: From 1979 to 1984, of a total of 2,510, 1,356 were jurisdictional, and, Mr. Mills, from my recollection of your statistics during that period, that is disproportionately high in favour of jurisdictional complaints compared to the overall number. Somewhat less than 50 per cent of overall complaints are jurisdictional; there, it is about 60 per cent. Unless Mr. Savage is referring to a marked dropoff from 1984 to current, of which we are not aware, his statistics do not bear out that conclusion.

Mr. Savage: Even before that. I am just trying to get--go ahead.

Mr. Bell: One of the things I have noted is that the North Bay jurisdictional complaints for those five years are disproportionately high compared to the rest of the province.

Mr. Savage: I am talking about North Bay compared just to itself. I do not know what the rest of the province is like. I think I got this from Mr. Mills; it might have been in the letter sent to Mr. Harris at one point.

"The level of jurisdictional complaints in North Bay has declined steadily from 1979 to the present. The statistics show that the level has dropped from an average percentage of total case load in the years 1979 to 1984 of 63.8 per cent"--so you are right that it is during that 5-year period--"to a level of 20.7 per cent in the year 1985-86 to the present level of 14.2 per cent during the first 10 months of 1986." That is North Bay compared to itself in terms of the overall case load.

Mr. Bell: All right. We can put this into perspective. I would like to ask Mr. Mills because, with all due respect to everybody else in this room, he is the guy I have confidence in when it comes to determining what these statistics mean.

We can take a five-year period, the 1979-84 period, and we can conclude for that period it was the 60-some-odd per cent ratio. We can take the subsequent two years, whether we take a general average of those two years or take them individually and we note that there is a minimum of a 300 per cent dropoff of jurisdictional complaints and as much as a 500 per cent dropoff, if we compare the first five-year period to the last six-month period. Is that right? Is that the proper conclusion from those two sets of statistics?

Mr. Mills: One thing I should mention by way of background is that beginning on April 1, 1985, we began to count all the business complaints. We began to count the so-called "fast actions." This means, in practice, that trying to compare complaint files opened and formal complaints prior to that time with complaints after that time is a fruitless exercise.

Mr. Bell: Except that we are not looking at the overall statistics; we are looking at the distilled jurisdictional complaints, and for that five-year period, it is 60 per cent. Even though you have opened the gates in terms of the number of things you count for the subsequent period, we are still looking at jurisdictional complaints. It is a distillation of everything that comes in, so, with respect, you can make some comparison. If the general average remains constant, then it does not matter whether you count 10 matters coming in the door or 1,000 coming in the door. It would be six or 600, if the trend remained the same, right?

Mr. Mills: My only point is that some of the fast actions were jurisdictional and, if we had been counting fast actions, we would have counted those as jurisdictional.

Mr. Bell: All right, but the point is that for the jurisdictional things, there has been a substantial dropoff in North Bay.

Mr. Mills: Yes. To have comparative time periods, our focus has been on the five months in the office situation and the five months in the store front.

Mr. Philip: The five-year comparison, in fact, is meaningless because an average, or even the mean, is not going to be a meaningful figure. In the case of one, it is high at one end of the five years and progressively lower and, therefore, the mean means very little. The only figure that means anything is the bottom line of where you stand now. That is the only comparison and that was the four-month comparison Harvey was trying to give us.

Mr. Mills: The most recent data show that the business is falling off.

11:50

Mr. Harris: Can I go on to page 12? You are talking about Mr. Moody:

"He indicated that he felt there had been no rational basis upon which to establish the North Bay office as a northeastern Ontario regional office. He was of the view that at least one other northern Ontario centre would have been a more logical location. He claimed that there had been no proper demographic study which had been conducted leading to the decision to designate North Bay as the most suitable northeastern Ontario location."

I will be tabling some information directly contradicting that. I suggest the committee hear from Mr. Moody. I do not think any of that is true.

Dr. Hill: I suggest a direct conflict then.

Mr. Harris: I am suggesting the information you have given the committee today is in direct conflict with anything I have heard from Mr. Moody. It would be in the interest of the committee to hear from Mr. Moody. You are imputing something to him, and he should be given an opportunity to come to the committee and confirm or deny it.

Mr. Savage: He said it to me, so there would be a direct conflict between what I am saying he said and what he is saying he said.

Mr. Harris: It would serve this committee well to hear from Mr. Moody rather than hear what others are saying.

Mr. Chairman: Is it the wish of the committee that we invite Mr. Moody to our next meeting? All in favour? Agreed. We will invite Mr. Moody to the next meeting of the committee.

Mr. Philip: The next meeting is next Wednesday. Are we not in the process of preparing a report? I am concerned about scheduling. I have no objection to hearing from Mr. Moody. I am perfectly open to Mr. Harris's suggestion in this regard, but I am concerned that we do not start scheduling a whole bunch of things when we have other things to do. Maybe the steering committee can decide when it is appropriate to invite Mr. Moody.

Mr. Harris: I am prepared to leave it with the steering committee. I just want it noted that I think we are hearing something that is not what I have heard.

Can I ask now about these reports, some of which were referred to by Mr. Philip? There was a study called the Pollock study. What was that?

Mrs. Meslin: Marshall Pollock was a consultant who was asked to come in, primarily to look at the administration of the office. He also looked at the regions, and if I recall correctly, he interviewed all the regional area managers. Mr. Morand was there at the time. I am not sure if he interviewed Mr. Morand.

Mr. Harris: Could you confirm that the cost of that study was in the order of \$70,000?

Mrs. Meslin: Yes.

Mr. Harris: Has the study been shared with the standing committee on the Ombudsman?

Dr. Hill: No, it has not been shared. It was an internal administration study. It was for my purposes, to direct and assist me in reorganizing the staff of the Ombudsman's office. I feel no need to share every study or every report for the office. It was an internal document for my administrative guidance.

Mr. Harris: Do you have any objection to sharing it with the committee?

Dr. Hill: None whatever.

Mr. Harris: Could I ask that the document be tabled with the committee? We are talking here about decisions you made and trying to analyse what information you had with which to make the decisions. It might be in order for the committee to have access to some of the information you used.

Dr. Hill: Right.

Mr. Harris: The regional planning report was referred to in your conversation with Mr. Philip. This was the regional report, phase 2. I assume that is the one tabled in the spring of 1985. It was not tabled, but given to you.

Dr. Hill: February 1985.

Mr. Harris: That document has not been shared with the committee.

Mrs. Meslin: The committee has it. That was the one requested earlier.

Mr. Harris: But we do not have it yet?

Dr. Hill: It was a huge document. We did not circulate it to everybody.

Mr. Harris: Could I circulate to the members of the committee some pages from that document and ask the clerk if he would do that?

I apologize that the committee members do not have the entire document. I would have liked to have referred to it, but I do have a few pages I managed to obtain and I would like to refer to those. This was the Moody study. We have read some evidence, as I have already referred to, that Mr. Moody remarks he could see no rationale or whatever for the North Bay office.

On page 8--it is "1" of what I have given you, but it says "8" at the top--there is a summary of the data, I guess, that was in this report. "The data applied to each of the four primary factors"--I cannot read that other word--"compiled and equated against each regional area. A value was assigned to each factor"--I gather these would be the demographics that were contained in this report--"and reverse scored. This permitted the rank ordering of 10 regional areas according to a perceived need for the services of the Ombudsman. This ranking of regions is shown as follows...."

I do not understand all the mathematics in this--and when committee members get the entire report, they can follow through--but the conclusion arrived at on this sheet was that North Bay had an aggregate score of 52 which means, according to all the criteria used in this report, North Bay required services of the Ombudsman more than any other area of the province.

Mr. Newman: What date is this?

Mr. Harris: This is the report that was received by the Ombudsman in February 1985 and I am now told has been tabled today. I called Dr. Hill today--I talked with you this morning, sir, and suggested that document might be handy if you did not mind sharing it with the committee.

Dr. Hill: That was in February 1985, and Mr. Moody seems to have changed his thinking considerably since that time.

Mr. Harris: In February 1985, did you agree with the report?

Dr. Hill: To tell you the truth, no. By that I mean this report was given for my guidance. Certainly I am not arguing with the statistics and things of that nature, but in terms of judgement and what should happen based on that report, it was just for my guidance. Many of the areas of the report I did not agree with; in fact, I changed it completely.

Mr. Philip: Are you saying this is not part of the final report that we have?

Mrs. Meslin: Yes, it is.

Mr. Philip: It is?

Dr. Hill: Yes. It is part of Mr. Moody's report.

Mrs. Meslin: Mr. Harris just asked if--

Dr. Hill: It is over there. He has the whole thing over there.

Mr. Philip: Was there a subsequent report from Mr. Moody that changed this or the conclusions of this?

Dr. Hill: No. Just his comments at the regional staff meeting; that is all.

Mr. Harris: Okay.

Mr. Savage: And the trends.

Dr. Hill: And the trends--things that happened since that report.

Mr. Harris: Okay.

Mr. Philip: I want to ask a question on the trends, because I think we have a problem in understanding the trends. The clearest way of giving us the trends would be if you could give us the annual figures for the North Bay office for 1979 to 1984 and then the numbers for 1985 and 1986. We cannot compare the 1985-86 numbers with the 1979-84 numbers, because they were collected in different ways, but we can see a pattern of what was happening between 1979 and 1984 and compare any one of those years to any other year in there, and we can compare 1986 to 1985. That may be the most meaningful figure we can get to see what is happening with the North Bay office.

12:00

Mrs. Meslin: I think I have it in front of me. I want to be very sure I do not misquote myself. Are you asking for total volume or for jurisdictional figures? And is it just North Bay you are asking about?

Mr. Philip: You do not have the jurisdictional figures in 1985-86, because the 1985-86 figures contain everything.

Mrs. Meslin: No. We have jurisdiction broken out.

Mr. Philip: All right.

Mrs. Meslin: The distinction is not, as Mr. Bell tried to point out, in jurisdiction; the number of jurisdictional cases would be the number of jurisdictional cases, no matter how you count it. It is how you count your overall volume; if you count that differently, you cannot compare the total volume.

Mr. Philip: That is right.

Mrs. Meslin: But you could look at how many jurisdictional cases you had between 1979 and 1984 in North Bay; we said it was 1,356 jurisdictional cases annually.

Ms. Evans: Each year?

Mrs. Meslin: The total.

Mr. Philip: The total is misleading. What we need is a breakdown of each year--

Mrs. Meslin: You want it year by year.

Mr. Philip: That gives us the pattern; then we should be able to graph what was happening to that office. The graph may be a lot more useful to us, because it tells us in a pictorial manner whether the office was in trouble. You should be able to graph that.

Dr. Hill: We can get that.

Mr. Harris: Let me go to the second page--I have written "2" on it; it is page 9 of this report--which gives the breakdown. Number 1 is a ranking of the actual complaint volume. Can you tell me the period this is for?

Mrs. Meslin: From 1979 to 1984.

Dr. Hill: From 1979 to 1984 was before my time.

Mr. Harris: Metropolitan Toronto received the most, 4,186; then there was London, 2,721; North Bay, 2,510; and it runs down, giving the top eight rankings.

When you get to the actual number of complaints per population, Thunder Bay ranks number one; there is a complaint for every 152 people. In North Bay, there is a complaint for every 213 people. Metro Toronto ranks last, with a complaint for every 511 people.

Can you explain what "real complaint volume" means versus "actual complain volume"?

Mrs. Meslin: By the way, for the committee, this is David Sora.

Dr. Hill: He is the researcher who did the research on this.

Mr. Harris: Fine.

Mr. Sora: We have actual complaint volume and actual complaint-population ratio, then real complaint volume and real complaint-population ratio; so columns 1 and 2 parallel columns 3 and 4.

The difference between "actual" and "real" is that "actual" refers to the total we get back from our computer records, while "real" is the same volume, the actual, but subtracted from that total is what we refer to as correctional and psychiatric services, or CAPS, complaints. During the assessment, Eric and I considered those complaints as coming from a peculiar population, and they are all dealt with by the Toronto office. Therefore, across the board, as a constant, we withdrew all the CAPS complaints to give us a real complaint volume and a real complaint-population ratio.

Mr. Harris: On the real complaint-population ratio, the North Bay office with 253 is again in the number two position versus Thunder Bay, which is number one at 169. The others are not even in the same league; you go to 350, 606 and so on, and Toronto is 726. Correct?

Mr. Sora: Correct.

Mr. Harris: What does "percentage of Ontario complaints" mean? Is that the total percentage?

Mr. Sora: Yes; what those complaints represent of all Ontario complaints, I believe for the five-year period we are talking about.

If you add the actual complaint volumes in the first column, I believe they total 21,120. For example, in the first cell, the Metro Toronto percentage is 19.8; Metro Toronto's complaints represent about 20 per cent of all the complaints received in that five-year period.

Mr. Harris: However, it would represent a significantly higher percentage of population for the area served. That is the total percentage; it is not broken down per capita?

Mr. Sora: No.

Mr. Harris: What does "government representation in units" mean?

Mr. Sora: First, across the top of this table are all the factors we have spoken of or referred to. We considered these to be the main factors in assessing the entire region--what would give us valid information in doing this assessment. We felt there might be a correlation if there was a city, region or town with high provincial government representation and with decision-making capabilities. We had the Ministry of Government Services run off a printout that gives us a breakdown in units. That is why we use the term "units." The three asterisks there have been explained somewhat.

Mr. Harris: Yes.

Mr. Sora: In any event, all it shows is, hierarchically again, that of all the places here--again this is in 1984--Metro has the most government representation.

Mr. Harris: In layman's terms, this means there are more government agencies there that the population may have difficulty with if it has a problem?

Mr. Sora: Yes.

Mr. Bell: Mr. Harris, can I put that in Ombudsman terms? In terms of the Ombudsman Act, it denotes the numerical presence of government whereby a decision, recommendation, act or omission may be made which might affect somebody in his personal capacity; i.e., the criteria for the Ombudsman to conduct an investigation.

I take it that 516 is an absolute number in terms of ranking; i.e., you could compare absolutely the highest number versus the lowest number and conclude that is the highest presence and that is the lowest presence, that is the highest potential for ombudsmanship and that is the lowest potential for ombudsmanship.

Mr. Sora: Yes, assuming there is a correlation between--

Mr. Bell: And the other numbers absolutely rank between the highest and the lowest?

Mr. Sora: This is simply frequency of volume. North Bay has more than Kitchener.

Mr. Harris: Then as of when this report was tabled, by this measure, North Bay ranked second only to Metro Toronto in the whole province.

Mr. Sora: I am sorry?

Mr. Harris: North Bay ranked second in the potential for Ombudsman functions because of the number of government representations.

Mr. Sora: Yes.

Mr. Harris: North Bay was second only to Metro Toronto in all the province?

Mr. Sora: Yes.

Mr. Harris: I might add that the figures make sense to me because when you look at the number of provincial civil servants in northeastern Ontario, not only per capita but also in actual numbers, you find there are more in North Bay than there are in Sudbury, Sault Ste. Marie or Timmins.

From this aggregate scoring rank order, you have used some measure there to arrive at a ranking of 52 for North Bay as the number one area where the Ombudsman's services would likely be required. Is that correct?

Mr. Sora: Yes. Of the seven regions we assessed, North Bay has a top ranking of 52, based on those six factors, for the period up to March 31, 1984.

Mr. Harris: I ask the committee to look at the third page I have; it is page 76 of this document. Now that we have established North Bay has the greatest potential need, the greatest actual need and the greatest number of complaints, let us look at the North Bay region and break it down. Here we see the actual volume of complaints in the North Bay region, the area the office covers, is 2,510. "Percentage CAPS" means what?

Mr. Sora: Correctional and psychiatric services. That is what is withdrawn to get the second table, the real volume.

12:10

Mr. Harris: If we look in this area and run through the constituencies that used to be served by this office before the Timmins and Sault Ste. Marie offices were opened, Nipissing, which is divided and which North Bay is in, has the highest volume, 390. If you look at the real volume, eliminating the other complaints, Nipissing at 289 is the highest again, followed by Cochrane South at 282. That was the situation up to 1974.

Dr. Hill: Until 1984.

Mr. Harris: The situation now is that, if everything remains the same, we have a Timmins office and a Sault Ste. Marie office. Six remaining ridings are served by the North Bay office: Nipissing, Parry Sound, Timiskaming, Sudbury, Sudbury East and Nickel Belt. Logically, those six ridings are served by the Sault Ste. Marie office or by the Timmins office. Is that correct?

Dr. Hill: The voices from outside have been distracting me. I am sorry about that. I cannot hear.

Mr. Bell: I think the answer is yes. I see heads nodding.

Mr. Harris: I am assuming Algoma-Manitoulin is served from Sault Ste. Marie and Cochrane North and Cochrane South from the Timmins office. We

have six left. Obviously Sault Ste. Marie is served by the Sault Ste. Marie office.

Mr. Savage: To put it in a proper perspective and to be accurate, Sault Ste. Marie was opened only a few months ago. When we were looking at a downward trend, that was prior to Sault Ste. Marie being opened as an office.

Mr. Harris: The situation now is that--

Mr. Savage: It us probably even more so now. With Sault Ste. Marie now on board, our downward trend may be more so; it may be greater.

Mr. Harris: All I want to say is that now there are six ridings served by the North Bay office, which, as of four or five days from now, will be served by a collect call to Toronto.

Mr. Savage: I do not think that is what Dr. Hill said. I think there are two possibilities, both of them very real. One is that effective October 31, an investigator would go up every three weeks to conduct hearings for two days. If the demand after two or three months warranted it, we would put in a stringer or field officer for three days a week.

Mr. Harris: That is as of the statement of today?

Mr. Savage: Yes.

Mr. Harris: As of two or three weeks or a month ago, when the issue was raised, the intention was to serve it--

Mr. Savage: I think it was always to have an investigator go up.

Dr. Hill: We are still doing a study of this, reassessing statistics which may now be out of date and not relevant.

Mr. Harris: I understand you are going to study it, but these statistics show that those six ridings represent roughly 50 per cent of the complaint volume. Interestingly enough, if you look at the history of complaints, it also shows that Sudbury, Sudbury East and Nickel Belt represent 491 complaints, if you add those three ridings together; Nipissing, Parry Sound and Timiskaming represent 675 complaints, if you add those three ridings together.

Mr. Philip: May I ask a supplementary on that? I think that is very misleading. There is no office in Sudbury. If they are getting that kind of volume without an office, you can expect that if they were to put in an office, particularly a storefront office, they would get an enormous increase in volume.

Mr. Harris: That may very well be, but what concerns me is that is not the option that has been offered as a rationale to close North Bay. The option that has been offered for northeastern Ontario is to call collect to Toronto.

Mr. Savage: That is not accurate. It is not fair.

Mr. Philip: That is not what was said.

Mr. Harris: Until I heard something a little different this morning, that is what was said.

Mr. Savage: We said very clearly at the last meeting or the one before that this is part of an overall study. Dr. Hill has underlined that several times. The intention in this move is not to reduce services to the north; it is probably to increase them by choosing a more appropriate location, a base where there will be more complaint volume. His commitment is not to reduce services to the north; on the contrary. I do not think it is accurate to state him in that way.

Dr. Hill: I think I made that clear in my statement.

Mr. Harris: Let me digress for a moment. You are speculating there will be more when you have an office in Sudbury than there is now. That is speculation, is it not? An office is serving that area and it has served there for a while. When the Office of the Ombudsman started, it started in Toronto.

Mr. Savage: We did not say which city. It could be Sault Ste. Marie.

Dr. Hill: It could be the Sault.

Mr. Savage: Interestingly enough, when Arthur Maloney talked about expanding to the north in his 1979 report, he mentioned Sault Ste. Marie, not North Bay, as a probable area. Who knows where he went off that course?

Mr. Harris: I suppose what he did was say maybe the Sault if there is to be one in the north, but then he went to Thunder Bay and northeast. It makes some sense that way, does it not?

Mr. Savage: I am not sure.

Mr. Harris: What a silly comparison to say Sault Ste. Marie for all of the north.

Mr. Savage: I do not think he said that.

Mr. Harris: What came out of that was Thunder Bay and the northeast.

Mr. Savage: I do not think he said the Sault for the whole north. That was not in the report. He said the Sault for the area of northeastern Ontario.

Dr. Hill: Nor have we determined whether it will be a stringer, a district or a regional office.

Mr. Harris: I would be interested to see the rationale as to how Sault Ste. Marie is more central than North Bay is to population, to numbers of people, to access, to aircraft, to roads, to trains, to anything, but that is fine.

Dr. Hill: We were just giving you an example of what Mr. Maloney said.

Mr. Harris: The data on the report, which you did not share with us previously but which you have shared with us today, indicate that the three ridings around North Bay had significantly more complaints than the three ridings around Sudbury, but you have indicated you want to shut down the North Bay office. You think a study will show that some other location will be better.

Mr. Savage: First, you are looking at 1984 figures.

Dr. Hill: And at 1979.

Mr. Savage: You are looking at 1979 to 1984 in these figures.

Mr. Harris: I had trouble getting these figures. Nobody has shared any figures with me other than these. Where are they?

Mr. Savage: These figures are in the report that you must have Xeroxed.

Dr. Hill: The report we tabled with the committee.

Mr. Harris: The report you tabled today?

Dr. Hill: No, the report that I said was an internal report, which nobody is trying to hide. The clerk now has it. I imagine one copy of the report was in the North Bay office with Mr. Moody. No one is trying to hide that report. I have never tried to hide anything from this committee.

Mrs. Meslin: Mr. Harris, I am very curious. Did you have any difficulty acquiring that report? Did anyone in Toronto or anywhere say you could not have it?

Mr. Harris: I did not say that. I said it was not shared with the committee. You are now telling me there are other figures that will contradict these figures. They have not been shared with me either.

Mr. Philip: On a point of order, Mr. Chairman: I asked the Ombudsman to go through his files and bring back any reports that might be relevant. He came here and openly said this was a report they had. He in no way attempted to hide it.

He became aware of another report that was given to us by Mr. Morin that he had not seen. He said it was not in the files, although he had looked for it and had not come across it. He admitted then that it might be reasonable to look at it and he commented on the report. There has been no attempt by the Ombudsman to withhold anything.

Mr. Harris: If I have indicated that, I did not mean to. The information took me a while to get, and I am disappointed that it was not shared. When it was requested, it was shared, and I confirm that. Now that the Pollock report has been requested today, it will be shared. The Ombudsman has acknowledged that it could have some relevance to his decision in this matter.

Dr. Hill: There are a zillion internal reports in the Ombudsman's office that have not come to this committee.

Mr. Harris: I understand.

Dr. Hill: They are always available. I could go over dozens of them in the past 10 years that have been done one way or the other by Mr. Maloney and Mr. Morand. There was no intention to withhold that from you at all.

12:20

Mr. Harris: Let me tell you how it appears to me. I do not have the answers and I think, as the member for Nipissing, I am entitled and the committee is entitled to the answers.

All the information I have been able to gather up to 1984 indicates that North Bay ranks as the number one location for an office in Ontario. It is a logical area for the office to be by any measure I have been able to determine from reports that have been done by the Ombudsman's office itself, but something appears to have occurred after 1984, whether or not that was in January 1986, to which some reference has been made, or whatever it is that has altered this situation for some reason or other.

I do not know what that is. I have heard about a new outreach program which, it has been acknowledged, was done 15 times as much as it was in North Bay, and the only comparison I hear on North Bay office rationale for opening or not is with Thunder Bay. That is the only thing I can see that is different in those two offices, and I have grave concerns about the commitment to the north and to the northeast vis-à-vis the rest of the province.

The only comparisons I see are to Thunder Bay, and I submit that the Thunder Bay office has done a tremendous job since it moved. The outreach program has been very successful, and there is probably an initial rush of complaints as a result. I will be interested to see the figures two or three years down the road.

Dr. Hill: Can you clarify that last statement, please?

Mr. Harris: In a moment.

I further submit to you, Mr. Chairman, that I do not know exactly what has occurred. The only thing in the evidence I have seen is that one difference between the Thunder Bay and North Bay offices.

I think there are some conflicting statements. I have tabled documents here on the Moody report that have been referred to. They indicate that Mr. Moody felt North Bay was the number one location in all Ontario, and certainly in eastern Ontario, yet we have some statements that Mr. Moody not only disputes that now but also disputed it at the time. I have referred to those and I do not want to go back over them.

Either that one comparison of Thunder Bay to North Bay and the outreach program has made the difference, or I suggest the committee should look at whether there is a significant difference of philosophy among Mr. Moody, the current Ombudsman and Mr. Savage. This great data base appears to have changed, weighted in the favour of closing the North Bay office, but it has not been shared to this point, and I think that should be looked at.

In the back of my mind, I question whether there are other reasons for closing the North Bay office that may have to do with personnel in those offices, because I have not seen any data that support it. While I am pleased that the Ombudsman today has suggested that more than a long-distance, collect phone call to Toronto will be provided for northeastern Ontario, the area formerly served by the North Bay office, I reiterate that I still think it is irresponsible to close an office and then tell us, "We are going to do a study on how it can be done."

I am in favour of expanding the service. I think the study ought to be done while the North Bay office is open, and nothing I have seen has changed my mind on that. I do not know where this committee should go, but I suggest that, at the very least, it should recommend that the North Bay office not close. It should remain open, although it may be in some different form after a study comes forward to indicate that it should. I would be prepared to look

at that at the time, and I suggest my other five colleagues in the ridings affected in northeastern Ontario, and indeed probably all of them, including Sault Ste. Marie, Algoma, Cochrane North and Cochrane South, should take a look at it.

I can accept recommendations that the services should be expanded and that perhaps there should be an office in Sudbury, but I cannot accept the recommendation and I suggest the committee should not accept the recommendation that the North Bay office should be closed. I do not know what power the committee has--I am not a full-time member of the committee--but I think the committee should recommend that the office remain open while all these studies are coming forward and the data are shared with us.

Mr. Bell: I knew what I was going to say until that last point, Mr. Harris.

If that is in the form of a motion, my advice is that the committee should address it. If it is in the form of a motion and the committee addresses it and asks me for advice, it is this: The matter should be addressed by the committee, if at all possible, avoiding what has happened in the past which, to use a colloquial phrase, is an arm-wrestling match between this committee and the Ombudsman. It has happened four or five times before. I believe the score is four to nothing for the committee, and I do not think that is an appropriate way to proceed.

No member of this committee--and I am sure Mr. Harris can be included--wants to embark on an exercise that infringes on the Ombudsman's ability to carry out his office functions or to determine how his functions under the act are to be performed. Having said that, in my opinion, this committee would be derelict in its duty if it did not give serious consideration to Mr. Harris's request for a motion.

If the committee wants to pursue the matter, it can decide what to do with it. It can do a number of things: It can decide that a recommendation could be made to the House in some way; it can decide that an expression of its opinion, a report, should be made to be considered by the House and the Ombudsman for whatever purpose relevant to that expression of opinion; or it can decide to do nothing.

A matter such as this has not come before the committee previously, where a member has said, "Something has happened in my riding that adversely affects my riding vis-à-vis the Ombudsman, and I would like the committee to become involved." The committee has been involved before in a matter where a particular member has been affected by something done by the Office of the Ombudsman.

I hark back to the Pat Reid television program issue that happened a number of years ago. At that time Arthur Maloney said, "You do not even have jurisdiction to talk about this." The committee said, "Thank you for your opinion; now we will seriously consider it," because it did affect Pat Reid.

There is some parallel in terms of the committee. I suggest the committee consider discussing, either now or at the first opportunity at the next meeting--with all due respect to the need to complete the report that is in preparation--whether and to what extent the committee wishes to pursue this.

It would be extremely unfortunate from the standpoint of Dr. Hill, the standpoint of the committee, the standpoint of Mr. Moody and the standpoint of

anybody else in this room or not in this room who has been affected by what has been discussed today, if things are not clarified. There is a cloud hanging over this room, and everybody should be given every reasonable opportunity to provide additional information, or upon reflection and with preparation time, to assist the committee or the process.

With respect to Mr. Harris's request, it will give this discussion some focus that it has probably lacked heretofore. Please take a word of advice. A committee or any forum that deals with issues such as this without a focus is not doing justice to the issue or to the participating parties. That is a rambling way of saying I think the committee has to give serious consideration to what Mr. Harris has requested. If the decision is in some way to continue a consideration of the issue of the closing, then do it quickly.

12:30

Not to anticipate anything, Dr. Hill, but perhaps it is fair to ask you to take this under advisement until it is known what the committee intends to do. We are within 72 hours of the formal closing of the office. You have made more than a comment. You have taken a very important position on page 10 of your statement. I boil that down to read: "We are not going to let North Bay down. We will have somebody there on a continuing basis, and if the need should be there, then we will put somebody there on a semi-permanent basis." Can I ask you to consider reversing that process?

Dr. Hill: What do you mean?

Mr. Bell: Have somebody there on a semi-permanent basis now, and if it is determined that this basis is not necessary, then further lessen that presence, rather than the other way around.

Mrs. Meslin: Can I make a technical point? Then Dr. Hill can answer. If he decides to do that, we will have a problem, because we will have to go through a competitive process to put someone in as a part-time employee, if we want someone in the North Bay area.

Dr. Hill: The other problem is that the office is effectively closed. People have been paid off, the landlord has received his stipend and the movers have moved out the stuff. However, as I stressed on the last page of my statement, we will continue to serve North Bay three days a week, with a seasoned staff person up there, not only to take complaints but also to conduct educational work in the hope that things will change. I also mentioned that we will be prepared to put a stringer in there, if necessary, the same way we have in Sault Ste. Marie and other areas, to give continuing service, but I feel it is fiscally irresponsible to continue the way we operated before.

Mr. Bell: I do not think that is what you have said on page 10. You have not said, "I will go back and continue the way we have done in North Bay." You talk of a varying degree of presence in North Bay.

Dr. Hill: Yes.

Mr. Bell: You have said you will start out once every two weeks and, if the need is there, you will go to a semi-permanent basis.

Dr. Hill: That is right.

Mr. Bell: I just throw out the suggestion that you might consider reversing that for the moment, at least until all the doors that have been

opened today and on previous days in the material this committee has can be determined.

Let me telegraph this. I hope we do not have a situation in which Eric Moody and Harvey Savage have a different version of the same conversation. That is something that happens all the time, by the way, with the greatest of respect for either participant.

Mr. Philip: Usually.

Mr. Bell: For example, if that is the situation, I do not know how material it is for you, Dr. Hill, to want to know that.

Dr. Hill: I am prepared to have Pauline Desbiens, who has been one of the senior people in that office, work on a semi-permanent basis, if she is willing--and we have an indication that she is--not out of an office, with its cost and the money, but out of her home. I am reversing to that extent, if that is okay.

Mr. Harris: You are looking at me.

Mr. Bell: No. I am looking to the committee--those members who are left--to decide when to discuss Mr. Harris's recommendation.

Mr. Philip: Would it be possible for Mr. Harris and I to have a quiet conversation in the corridor? We may be approaching an agreement from different perspectives. Perhaps we have given Mr. Harris something that he may, on sober reflection, think is a victory for him and his people but at the same time does not undermine my concern for fiscal responsibility in the operation of the Ombudsman's office. If we can leave it at that, perhaps we can get back to the Ombudsman on that.

Mr. McLean: I do not like the term Mr. Philip has used, calling it a victory for Mr. Harris. This is a victory for the people of the province. Mr. Harris is speaking for the area he represents. It is the people of that area, the ones we are talking about, who are being served.

Mr. Philip: With the greatest of respect, I am talking for the people of the province too. I am talking for all those people who may not be receiving any kind of service unless we develop a rationalized, reasonable, well thought out, demographically demonstrated process of serving all northern Ontario. That is what we are all trying to achieve.

If I were Mr. Harris, I would be concerned from my point of view and that of my own people. That is a proper perspective for Mr. Harris to have. At the same time, it is an equally proper perspective for some of us to say the people in Sudbury and other areas have to receive service and there are only so many bucks to go around.

If we can work out a reasonable pooling or synthesis of those two interests, both of which are legitimate interests and both of which serve the people of Ontario, we may be able in an imperfect world to come up with some kind of compromise that at least gives both sides of that issue three quarters of the cake rather than one side winning and the other side losing.

Mr. Harris: I think we are interested in the same thing. We have come about it in very different ways. I do not disagree with Mr. Philip's comments save and except there is implied that in providing more services to

Sudbury, which I would be in favour of, something has to be taken away from another part of the north.

Something that has bothered me in all the comparisons is that it is always North Bay versus Thunder Bay; if we are going to rationalize in the north, it has to come at the expense of areas in the north. I submit, from any information I have seen, that perhaps additional service to the north ought to be an add-on. If you are looking at the area of cost per complaint, which has been used as the main justification, perhaps some personnel should be shifted from southern Ontario to northern Ontario. I would come from that direction far more than trying to rationalize what meagre resources are in the north.

I also have concerns about some of the things that have come up, such as the amount of staff, time and dollars expended in the south for complaints that originate in the north. I would suggest some look should be taken at that. We have been doing that in all government ministries for a number of years. The new government itself has indicated, at least verbally, that it plans to carry on with that. That disturbs me as well. In my opinion, it would lead to far more need for a regional office in the north, regional managers and more work being done there.

Having said all that, let me ask counsel a question. First, though, Dr. Hill has suggested today he will hire one of the existing staff in the north on a permanent basis in North Bay while everything is ongoing.

Dr. Hill: Semi-permanent.

Mr. Harris: What does "semi-permanent" mean.

Mrs. Meslin: I think what they are saying is it is the same as the part-timers; it is three days a week.

Dr. Hill: At least a three-day-a-week presence in North Bay--out of their homes.

12:40

Mr. Harris: I do not want to get into logistics--I will leave that to you--but I gather this would be the same person who has been terminated from a full-time job, and you would offer her a part-time job.

Dr. Hill: Right.

Mr. Harris: You would be involved in logistics, and I am not sure I should interfere in that, but I would suggest it might be smoother to retain her full-time on the same salary basis as she is on now, even though she is operating out of her home, while this whole matter is being reviewed.

Let me ask counsel, is the committee to come back to this whole matter?

Mr. Bell: That is for the committee to decide.

Mr. Harris: I am prepared to leave it today, having added that, and I have no difficulty in discussing it with Mr. Philip and others.

Mr. Bell: Mr. Harris, to help clarify the point--I was referring to page 10 before, and I meant page 15; my apologies--the intent of Dr. Hill's offer in that context is to give North Bay the same status as the operations

in Sault Ste. Marie, Windsor and London. If that is what Dr. Hill says he is prepared to do, and if he can confirm that is what he is prepared to do, then I think it is left for this committee at the earliest opportunity, i.e., next Wednesday, to consider with Mr. Harris or anybody else who wishes to be part of the process what that means in the context of things we have talked and heard about today.

Dr. Hill, if you have said, "Yes, that is what I am prepared to do, and I will do it now," then to use a tennis metaphor, that puts the ball in our court.

Dr. Hill: I am certainly prepared to do that as soon as things are clarified, as was mentioned earlier, and in the meantime to have the person work there on a semi-permanent basis until this is clarified, before we give this the same status as Sault Ste. Marie and Windsor.

Mr. Bell: Before what is clarified? Whom do you want to do the clarification?

Dr. Hill: I thought the committee was still sort of wrangling and concerned about which way it wanted to go on it. If members are satisfied with that arrangement, I will immediately contact Mrs. Desbiens and set up a semi-permanent arrangement with her and, if necessary, move from there to the status of a field operation.

Mr. Chairman: Is the suggestion that counsel has just made satisfactory?

Mr. Harris: If I understand it, you are suggesting that as of today, North Bay would have the same status as Sault Ste. Marie, Windsor and London, and then we would be reviewing the rest of it.

Dr. Hill: Yes; while we were reviewing it, it would have the same status as Sault Ste. Marie.

Mrs. Meslin: We should clarify, though, that this is on the understanding that Mrs. Desbiens is willing; she has expressed a desire, but as of today, we have not approached her with this. In fairness, the committee has to understand that. We will go back and phone her.

Dr. Hill: And if it is not Mrs. Desbiens, it would be a North Bay person.

Mr. Savage: She has expressed an interest as recently as last week. Nothing was offered, but she has expressed an interest.

Mr. Philip: May I be perfectly clear on this? I know what is being offered, but I want to know what the time frame is. This person will work as a stringer or part-time person three days a week out of her home, which will reduce the cost of the operation tremendously. In the process, we have a couple of things going on. One is that in the next two months we should be able to receive some kind of reliable statistics on how much demand there is. We will also have to take into account and consider that some people may be more reluctant to go to someone's home than to a storefront.

Dr. Hill: We would use other premises, not a person's home.

Mr. Philip: Right. That was leading up to my next point. I would strongly suggest not only that she operate out of her home but also that there

be a church or some other public place where it is advertised she will be on a regular basis in the same way that people in the riding of Etobicoke know I will be home every Wednesday evening and they can come to see me.

Dr. Hill: I can assure you that our other stringers operate that way; they work out of city hall or some place like that.

Mr. Philip: Okay. We will also monitor it over a long enough period--it will be in operation for two or three months or perhaps even longer--so we can develop some statistics that are meaningful.

Dr. Hill: Right.

Mr. Philip: In the interim, the demographic study on northern Ontario will be progressing. Would we have that in four months?

Mr. Savage: Easily.

Mr. Philip: Is it possible that we could have it during the Christmas recess? Is it going to be that soon?

Dr. Hill: No. It will take a little more time than that. I think that is a little soon.

Mr. Philip: Then come this summer, we should be able to sit down with the Ombudsman and look at the total study and where you plan to go in terms of servicing northeastern and northwestern Ontario.

Mr. Savage: I would say probably in the spring.

Mr. Philip: All right. We should have that in the spring. Therefore, this summer we should be able to deal with that. In the interim, this part-time office will be opened in North Bay.

Dr. Hill: Yes.

Mr. Philip: Also, the Ombudsman will get back to us with the additional research information we asked for.

Dr. Hill: Right.

Mr. Bell: Can I supplement that for the record? To the extent that this committee considers this further with you, sir--since it is my function to try to assist and to give some focus--something happened in 1984, or at least a trend started in 1984, or perhaps in 1983, wherein the numbers of complaints in general and jurisdictional complaints specifically decreased significantly in North Bay. The committee would be very interested in exploring that to determine what the possible reasons are.

With respect to everybody who has concluded, I do not think it is as simplistic as saying--I do not even know what the term means--we have reached a saturation point. I do not know what that means in the context of the Ombudsman. I understand what it means in terms of marketing studies when you are selling widgets, but I do not understand it in the Ombudsman's terms. Your work load is determined by the number of decisions, etc., made by the public service, regardless of an area; so unless somebody has a crystal ball, I do not know how you can determine the saturation point, and I do not even know what it means.

So the record is clear, as and when it is considered by the committee further, for your notification, we want to give some attention to that. I can think of a number of things that have happened since 1984 which the committee might want to look at in terms of identifying reasons, but no useful purpose would be served by putting them on the record now. That is all I have to say.

Mr. Chairman: Is there any further discussion?

Mr. Harris: Am I to understand that counsel is suggesting that next week we--

Mr. Bell: No. I do not think it is necessary. They are going to stay open until the spring.

Mr. Philip: We have our conclusions--

Mr. Bell: Let some things happen over a period, and then let us look again, unless you would like to--

Mr. Philip: Mr. Chairman, do I take it that next week we will deal with the preparation of our report?

Mr. Chairman: That is what I understand. Is that satisfactory to the committee?

Mr. Morin: When are we going to talk about the expansion of jurisdiction?

Mr. Bell: We have to do that next week.

Mr. Chairman: Then the committee will be meeting next week.

Dr. Hill: For clarification, do I understand that no more review of this matter is taking place because of the changes we are currently making in terms of the part-time person and--

Mr. Bell: Not immediately. I think it is worth while to let things settle and to get that new arrangement in place. Then--in the great phrase around here--in the fullness of time, with all the evidence in, we can look at it.

Dr. Hill: Good enough.

Mr. Chairman: I would also like to inform the committee that the Moody report has been filed as an exhibit with the clerk of the committee, and copies will be made available and distributed to members as soon as possible.

Mrs. Meslin: Mr. Bell, do you want us to attend next week?

Mr. Bell: I would like to try to squeeze in two things next week: the start of a discussion on the jurisdictional matter and an in camera deliberation on the report.

Mr. Philip: How do you propose to do that?

Mr. Bell: I would like to do the jurisdictional thing first, at 10 a.m.

Mr. Philip: Do you think you can cover that in one session, in a morning?

Mr. Bell: What is the definition of morning?

Mr. Chairman: If we are going to have an in camera meeting--

Mr. Philip: The jurisdictional discussion cannot be in camera; it is a public document and it deals with the public.

Dr. Hill: Is the public trustee in camera too?

Mr. Bell: No. That part will not involve you; that is for the committee.

Can we put a time limit on the discussion of the jurisdictional matter? Is it possible to meet at 9:30 and finish off the jurisdictional matter at 11? At least it starts the discussion. Then from 11 until the time remaining the committee will go in camera.

Mr. Philip: Can I make an alternative suggestion? I suggest we do our report next week. Then the following week we can deal with what is essentially a separate report. If we come to conclusions on that, we can always tag it on as part of our major report. At least, let us get our report done. On the other one, we may want to call witnesses; we may even want to hold hearings. It is a fairly broad, important report. I cannot see it being dealt with in half a morning. It is not possible to deal with it.

Mr. Chairman: Is that satisfactory?

Mr. Bell: That is a good suggestion.

Mr. Chairman: Do you want to meet at 9:30 or 10?

Interjection: At 10.

Mr. Chairman: All right; 10.

The committee adjourned at 12:51 p.m.

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STANDING COMMITTEE ON THE OMBUDSMAN

ANNUAL REPORT, OMBUDSMAN, 1985-86

WEDNESDAY, NOVEMBER 5, 1986



STANDING COMMITTEE ON THE OMBUDSMAN

CHAIRMAN: McNeil, R. K. (Elgin PC)

VICE-CHAIRMAN: Sheppard, H. N. (Northumberland PC)

Bossy, M. L. (Chatham-Kent L)

Hayes, P. (Essex North NDP)

Henderson, D. J. (Humber L)

Hennessey, M. (Fort William PC)

McLean, A. K. (Simcoe East PC)

Morin, G. E., (Carleton East L)

Newman, B. (Windsor-Walkerville L)

Philip, E. T. (Etobicoke NDP)

Shymko, Y. R. (High Park-Swansea PC)

Substitution:

South, L. (Frontenac-Addington L) for Mr. Morin

Clerk: Decker, T.

Staff:

Bell, J., Legal Counsel; with Shibley, Righton and McCutcheon

Evans, C. A., Research Officer, Legislative Research Service

Witness:

From the Office of the Ombudsman:

Meslin, E., Executive Director

LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON THE OMBUDSMAN

Wednesday, November 5, 1986

The committee met at 10:16 a.m. in room 151.

ANNUAL REPORT, OMBUDSMAN, 1985-86
(continued)

Mr. Chairman: We will begin our meeting. I will call on Mr. Bell to address the committee.

Mr. Bell: As the members know better than I, last night a specific matter in your 13th report was debated by the committee of the whole House, with a subsequent report to the House. The committee clerk has placed before you a copy of the Votes and Proceedings. My understanding is that the specific recommendation was adopted by the committee of the whole House and thereafter by the House. If that is the case, it ranks in status with all the other committee recommendations that have been adopted by the House.

What remains is for the committee to determine from the Minister of Consumer and Commercial Relations (Mr. Kwinter) if and when the recommendation will be implemented. In the past, after recommendations are adopted by the House, they sometimes seem to get lost in the shuffle between committee hearings and Ombudsman reports. It is a unique circumstance when you meet the day after a specific recommendation has been adopted.

It would be in order for you, sir, to send a letter to the minister referencing the adoption and inviting the minister to inform you when the recommendation will be implemented. It may be possible to report that in the report you are in the process of finalizing now. Otherwise, it may be left until when the committee next meets in a formal way, perhaps in January, before any real attention can be given to this case.

It is a long-standing case in terms of the initial complaint to the Ombudsman. It is also a long case in terms of when you last addressed it. Anything that can speed the process towards implementation should be done by the committee. That is all I have to say about the issue.

Mr. Philip: I am concerned that in our reporting, which I assume will be a summary of what happened, we address the concern that the minister's parliamentary assistant had and that this committee had addressed with various deputations from the Ministry of Consumer and Commercial Relations, namely, the argument that somehow this was setting a precedent. It was the view of the committee and of members of the community when we dealt with it that it was a unique situation. A minister had made specific promises, not on one occasion but on a couple of occasions; he had done it publicly and had even done it before a committee of the Legislature.

I wonder whether we can address the concern that was expressed by the minister's parliamentary assistant--the minister could not be there for the debate, and I understand there was a prepared statement by the minister which was read verbatim by the parliamentary assistant. It was not his own speech. The concern is that this was a unique situation and we do not see it as setting a precedent in any way.

I would like to get the parliamentary assistant's exact words out of Hansard, but if we take the original report--he used words similar to what the people from the ministry used here. We discounted that and said, "No, it is not something that is going to open up a floodgate to a whole bunch of other applicants, because this is the only case in which the minister has publicly made specific promises." Whether or not people were entitled to that money, he did make a specific public promise.

Perhaps we can ask in the drafting of that one section of the report that we talk about the uniqueness of that case and address the concerns expressed in the parliamentary assistant's comments.

Mr. Bell: That has already been anticipated in the preparation of the draft report, which you will be considering later this morning. It is correct that when the minister and the deputy minister appeared before you earlier this year, they seemed to be concerned about the fact of an involvement on the minister's behalf to try to resolve a dispute that in itself created an obligation.

The committee said at the time, and I am sure will want to say it in this next report, that it is not the involvement per se that creates any obligation in this case, but rather the nature and extent of the public commitments made by the minister to the resolution. In effect, it was a guarantee. The committee can and should address that very specific issue, so it does not get hit over the head with this recommendation by others in different circumstances.

Mr. Philip: It would be a shame if we opened up people's aspirations to something they are not going to get.

Mr. Chairman: Is there any further discussion? If not, we should consider a possible date for a meeting to discuss expansion of the Office of the Ombudsman.

Mr. Philip: There are a couple of things you want to look at. One is whether we initially meet to discuss the four recommendations. I think there are essentially four recommendations. I do not see the fifth one, which says it would be premature for us to give jurisdiction over municipalities, as a recommendation. It is simply that the Ombudsman has said, "I have looked at the field and there are four, and a fifth one that has been thrown around is not applicable at this time." We can accept that.

At that time, though, we have to decide, and I would like input from the Ombudsman, whether he feels it would be useful to have some public input into the four areas in which he has asked for extended jurisdiction.

Mrs. Meslin: He has left it to the discretion of this committee to decide the process. He has tabled the report with his feelings and put it in the hands of the committee to decide.

Mr. Bell: You need at least a good half a day, minimum, to discuss the issue thoroughly and to make the decisions necessary for the continuation of the debate, if it is so called, on expanded jurisdiction. It should probably be sooner rather than later, because depending on decisions on process, there will be some organizational time required and some scheduling of notice required for things in January and February.

Speaking selfishly, I am going to be out of town for three days next week, and I would like to be part of this discussion, so when you are setting dates, if you can keep that in mind, I would appreciate it.

Mr. Chairman: Next week is a short week because the Legislature is not meeting on Monday or Tuesday. November 19 is the next date for meeting.

Mr. Philip: Unfortunately, I left my calendar upstairs, because I did not realize we were dealing with times at this meeting. Perhaps we could leave that for a couple of minutes until I get it, but it seems to me I have a rent review appeal on that day.

Mr. Hayes: Is the 19th not a Wednesday?

Mr. Chairman: It is a Wednesday.

Mr. Hayes: I have a problem with Wednesdays, because I am on the standing committee on government agencies.

Interjection: The Ombudsman's committee meetings and that are interfering with one another.

Mr. Chairman: The clerk informs me that the committee is only authorized to meet on Wednesday morning because the House is in session. I know Mr. Shymko is in the same position.

Mr. Bell: That narrows the scope of days. Maybe it is best to leave it until later or for the clerk to canvass which of the next two or three Wednesdays is the best in the circumstances for as many as possible.

Mr. Hayes: Can we change the hours?

Mr. Hennessy: Why not wait until we have enough time for everybody? Trying to put it in next week is an impossibility.

Mr. Chairman: I do not think there is any point in trying to meet next week.

Mr. Hennessy: I suggest we leave it for a couple of weeks. You could get the clerk to speak to everybody and make sure everybody can come. Then you can call a meeting.

Mr. Chairman: We could meet at 9 a.m. which would give us an hour before the other things.

Mr. Hayes: That would be better.

Mr. Chairman: Would the other members be willing to meet at 9 a.m.?

Mr. Bossy: I have no problem with that. Since I have not been able to attend all the meetings and I may have missed something, has the position paper that the Ombudsman tabled been discussed by the committee at all?

Mr. Chairman: No, that is what that meeting will be for.

Mr. Bossy: In the recommendations in his position paper, he indicates that there should be quite an extensive amount--I believe he mentions that members of the public and special interest groups may want to

make representations here. Mr. Bell indicated that we should have a half a day. This sounds like an extremely big agenda that is going to take place to deal with this position paper.

Mr. Bell: No, Mr. Bossy, I suggested a half day for the discussion that is necessary within the committee and with the Ombudsman on how the committee should best go about addressing the question of expanded jurisdiction. Any decisions that the committee make at that time will, of course, affect whether and to what extent interest groups are invited to appear.

Mr. Bossy: The half day is for setting an agenda.

Mr. Bell: That is right. If the committee decides it wants to hear from some interest groups and/or representatives of the public, you are in for a number of days. It is an organizational meeting, and I do not think you need more than a half a day for that. While it would include, of necessity, some discussion of the detail of Dr. Hill's report, it is not my intention to get into that in any extensive way.

When the process is started, that is the time to address Dr. Hill's paper. The committee may decide to use Dr. Hill's paper as the focus of the hearings, or it may say it is but one piece of information we will be referring to in addressing the central question of whether jurisdiction should be expanded at all.

Mr. Chairman: Can we now proceed with the 15th report? Should we do it in camera? Can we have a motion that the committee now go in camera?

Mr. Hennessy: I so move.

Mr. Chairman: Are committee members all in favour of the motion?

Motion agreed to.

The committee continued in camera at 10:33 a.m.

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STANDING COMMITTEE ON THE OMBUDSMAN

ARGOSY FINANCIAL GROUP OF CANADA LTD.

MONDAY, APRIL 13, 1987

Morning Sitting

STANDING COMMITTEE ON THE OMBUDSMAN

CHAIRMAN: McNeil, R. K. (Elgin PC)

VICE-CHAIRMAN: Sheppard, H. N. (Northumberland PC)

Bossy, M. L. (Chatham-Kent L)

Hayes, P. (Essex North NDP)

Hennessey, M. (Fort William PC)

Mancini, R. (Essex South L)

McLean, A. K. (Simcoe East PC)

Morin, G. E., (Carleton East L)

Newman, B. (Windsor-Walkerville L)

Philip, E. T. (Etobicoke NDP)

Shymko, Y. R. (High Park-Swansea PC)

Substitutions:

Ashe, G. L. (Durham West PC) for Mr. Sheppard

Offer, S. (Mississauga North L) for Mr. Bossy

Clerk: Decker, T.

Staff:

Kerzner, T., Legal Counsel; with Perry, Farley and Onyschuk

Evans, C. A., Research Officer, Legislative Research Service

Witnesses:

Individual Presentations:

O'Reilly, M. D., Legal Counsel to Argosy Investors; with Weir and Foulds

Berger, E. T., Argosy Investor

Mazurek, P. J., Legal Counsel to Argosy Investors; with Stanley M. Tick, Q.C.

From the Office of the Ombudsman:

Hill, Dr. D. G., Ombudsman

Meslin, E., Executive Director

Morrison, G., Director, Investigations

From the Ministry of Financial Institutions:

Moore, D. C., Legal Counsel; with Lockwood, Bellmore and Moore

LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON THE OMBUDSMAN

Monday, April 13, 1987

The committee met at 10:18 a.m. in room 151.

ARGOSY FINANCIAL GROUP OF CANADA LTD.

Mr. Chairman: Members of the committee, ladies and gentlemen, we have ordered some more chairs. If you will be patient, they will be along shortly.

We are going to begin our deliberations, and I am going to call on our counsel, Mr. Kerzner, for his opening remarks.

Mr. Kerzner: Mr. Chairman, members of the committee, before we get into the detail of this recommendation-denied case, there are two preliminary matters that need to be dealt with. The first is a request by two groups for standing as participants in these proceedings, and I think we should get that one out of the way at the outset. Perhaps Mr. O'Reilly and Mr. Berger, if he is here, who are the representatives of the two groups who have indicated that they want to make a request for standing, could come forward. I would ask each of them, one after the other, to tell the committee why his group requests standing. Could we begin with Mr. O'Reilly?

Mr. Philip: We will not force you to run in the election if you sit there.

Mr. O'Reilly: Mr. Chairman, I have been retained by between 125 and 150 of the creditors who lost money in Argosy. As a little background, some seven years ago, I represented a few creditors who came to me as soon as the receivership occurred. I was able, on behalf of all the creditors, to obtain standing in the receivership action. Over the last seven years, my role has been simply to supervise the realization of the assets by the receiver and manager of the Argosy companies.

In the course of the last seven years, I have had conversations with probably 200 or more of the creditors from time to time and have heard their story. While I was representing them as a class, I felt that I could not take on any retainers from these creditors since there would be a possible conflict.

The receivership has now drawn to a close. All the assets have been realized and the receiver right now is doing his statement to pass before the courts and make the paltry distribution to the creditors on three or four of the projects in which there were small recoveries. Subsequently, I have been retained by a number of these creditors who wish to have their story told.

A couple of the letters in plaintive voices said to me: "We cannot be heard. Nobody will listen to us." I feel this is probably the last opportunity that these creditors will have, on their own behalf, to have anybody speak for them. For those reasons, I ask that I be granted standing to address this committee at the appropriate time.

Mr. Kerzner: Mr. O'Reilly, can I ask you a couple of questions? You use the term "creditors." I take it you mean that to be synonymous with people

who invested in syndicated mortgages, the RRSPs or the two series of debentures that were issued?

Mr. O'Reilly: Yes, I do. I mean the public people who put up their money in Argosy in what they thought were investments. I use the word "creditors" because this is not exactly what you would call an investment, whereas it should have been.

Mr. Kerzner: I have one more question. Could you tell the committee why, in your view, the Ombudsman would not be an adequate enough spokesman on behalf of the interests of the people who invested in the various Argosy vehicles?

Mr. O'Reilly: The Ombudsman has done a superb job. We wish to support his report. However, he does represent a general class of complainants who have come to him. There is certainly an overlap in the complainants from whom I have received correspondence, and there are others who were not in that particular category.

I submit that this is a most unusual Ombudsman's report. This is not one where one or two people feel aggrieved by actions of the government. This is the largest Ombudsman's representation that has ever been made in this province or anywhere else I know of. Some 1,400 to 1,600 people have been affected by this and are affected by his report. For that reason, I submit that more support for the Ombudsman's report is not amiss.

Mr. Kerzner: Thank you. Those were the questions I had.

Mr. Philip: I am sure you are aware that the role of this committee is not to rehear or recycle a complaint that is before the Ombudsman. To do so, of course, would be very time-consuming.

Having said that, I would like to ask you whether there is anything in the presentation that you would make, or in your analysis of what is a fair adjudication, that differs from that of the Ombudsman?

Mr. O'Reilly: Not in the conclusions, Mr. Philip. I have prepared a brief that supports, from the legal point of view, the Ombudsman's report and, in addition, it abstracts a profile of some of the creditors. In other words, it gives you the flavour of who these people were. These people were largely elderly. These people had put substantial amounts of their life savings into Argosy's investments and these people are seriously hurt by the loss.

Mr. Philip: I am sure you are aware that the Ombudsman has tabled with us this morning a document of representative letters from Argosy complainants. Indeed, I assume all members of the committee have received letters from individual people out there, so I think we have a fairly good profile. My concern is that there are a number of people who are out of pocket--in some cases, a great deal of money; in other cases, their life savings--since 1977. I worry that if we prolong the hearings, it may create an even greater injustice to them.

I propose that the subcommittee meet with the two deputations that have asked for standing and review the information they have. The deputations are also free to table any documents with us, provided it is not new information, and at that time the subcommittee might decide whether there was any information that was relevant and that had to be dealt with in a further presentation.

Mr. O'Reilly: Mr. Chairman, I do not intend to prolong this hearing in any way. I would simply like to have 15 minutes or half an hour to present the position of the various persons. As I say, there are so many involved, they feel they need additional representation to support the Ombudsman's position.

Mr. Philip: May I ask Dr. Hill's position on that? Do you have any feelings concerning that?

Dr. Hill: Concerning his standing?

Mr. Philip: Concerning whether these two groups should have standing.

Dr. Hill: It is a bit without precedent. I understand your position. I would rather that the standing committee make the ruling on it. Of course, they will. It is a bit without precedent. We will be presenting the case.

Mr. Ashe: I can appreciate and understand where Mr. O'Reilly is coming from, but all the members of the committee are fully aware, in my view, of the profile of the people who have been involved in this unfortunate incident. Dr. Hill hit the nail on the head when he said that has really not been the role of this committee and in his view, and my understanding, it would be a precedent that would be unfortunate to what the role is.

This has become known as a very nonpartisan, nonpolitical committee that is adjudicating, if you will, and reviewing the reports made after exhaustive investigation by the Ombudsman and his staff, and to deviate would be very unfortunate. With all due respect to Mr. O'Reilly, I have some concern that as soon as we give him status, he may take that status too far and feel that, if not obligated, he at least has approval literally to get into a cross-examination process.

I know you will say no, but still, I do not think that would be very helpful to the process in the limited time we have. As I understand it, although this committee asked for more time, it has been given four days this week. We have a tremendous amount of material to cover from both sides, and I am not sure that adding to that time process would be helpful to anybody, including getting the whole thing rationalized and finalized, which, hopefully, is one of the main concerns of everybody involved.

Mr. O'Reilly: If I could reply briefly to that, the status that you grant me could be limited to making representations and not to cross-examining. I would be prepared to live by that ruling. It is not my intention to lead any witnesses before this committee, but simply to submit final argument when that occasion arises.

Mr. Hennessy: I look at it a little differently. Something of this occasion, where people lose a large amount of money, their life savings, does not happen every day or every week. Some people talk about it as if it happens every second day. I do not think there is any harm in having Mr. O'Reilly make a brief presentation. The people here are depending on Mr. O'Reilly for his expertise, as you may call it, to present their case. I do not think that I as an individual would have the expertise to get up and to make a presentation where hundreds of thousands of dollars of people's money is depending on it.

If you are in a business, you can go into another market tomorrow and get your money back, or have a bankruptcy, but these people have lost their life savings, and it is not something that happens every day. As far as I am

concerned, if you will keep your word and make a brief presentation of 15 minutes, the people you are representing would feel much happier that you had the opportunity to present your case. I am in favour of it.

1030

[Applause]

Mr. Chairman: Order.

Mr. Kerzner: For what it is worth, I am happy to give the committee my recommendation. I think to grant standing to Mr. O'Reilly, and we are going to have to hear from Mr. Berger in due course, would be a break with both the precedent and the practice of this committee.

The committee is free to break with its own precedents if it deems it to be desirable, but I have heard nothing that would lead me to recommend to you that Mr. O'Reilly takes any different position from that of the Ombudsman. The Ombudsman and his people are skilled and experienced advocates before this committee on behalf of the people whose complaints they investigate. I have not heard any reason why you ought to depart from your normal practice and procedure in this respect.

Mr. Chairman: Is there any further discussion by the committee members?

Mr. Philip: I would be prepared to have a compromise, that a member of each party, namely, the subcommittee, meet with Mr. O'Reilly and the other group and hear their views, perhaps during a lunch-hour meeting. If there is anything substantially different from the Ombudsman, then we could recommend at that point in time that they be allowed to make a short presentation.

I am very concerned that this whole matter not be delayed, because there has been what appears to be some injustice in the delay. That would better serve the interests of the investors, as well as keep the precedent of this committee. If we deviate substantially from it, it will mean that anybody can demand a hearing before the committee, and that will undermine the way in which the Office of the Ombudsman was set up. I wonder whether you would be willing to accept that compromise.

Mr. O'Reilly: Seven years have gone by and now, suddenly, there is a great rush at the end. Why is there such a rush to get it through in four days? I certainly do not intend to delay this hearing, but these people have been waiting for seven years to have their say. Surely, you can grant them that small wish.

Mr. Kerzner: I think that before the committee determines what to do with Mr. O'Reilly's application we should hear from Mr. Berger, so that when the members of the committee do vote and decide, they will have both requests before them.

Can I ask you the same thing, to tell the committee why you and your group wish to have standing in these proceedings?

Mr. Berger: Good morning. Ladies and gentlemen, if I may, I would like to address that through a spokesman of ours, Pat Mazurek, who is sitting beside me. He will speak to that issue.

Mr. Mazurek: As you know, Mr. Berger has applied for standing before

your committee. He did so on behalf of a group of which he is co-chairman. It is a large group and it is a group that was formed years ago, shortly after this episode came to light. The members of this group have been waiting with extreme patience for their chance to speak, years as Mr. O'Reilly indicated, and they would like to make submissions at this time that they feel will lend further context to what you are going to hear from the Ombudsman.

This group certainly has neither the intention nor the resources to repeat what the Ombudsman is going to present to you, nor for that matter to question closely what the government ministry may present. We are content to have the Ombudsman fulfil both functions on our behalf and we are here to support him in that regard.

Our request that you hear from us personally, as it were, is based upon a concern that the Ombudsman is, by definition and by the terms of his act and his appointment, limited in what he can get into. We feel we can add to his submissions by giving the committee a bit of a feeling for the human dimension of what took place here.

I know Mr. Ashe indicated a moment ago in his questioning that the committee is aware of that. The people we hope to speak for are gravely concerned that the committee knows about the human dimension. They are concerned, from what they have heard so far, that at least the government does not know about the human dimension. There have been representations to the effect that this is a group of investors who made a bad investment and why should tax dollars be spent to bail them out.

What we wish to get across on a human level, in addition to whatever the Ombudsman can say in this regard, is that these are not that sort of people at all. They are people who have, in effect, not made bad investments; they are people who have been robbed or have been the subject of fraud, as found by the Supreme Court of Ontario. It was not a bad investment.

We would like to get across to you on a human scale, if we could, and very briefly, what kind of people were involved, what it meant to them, how they got into it and what has happened to them since. These are things I believe the Ombudsman has a limited ability to present to you and we would like to present it, on behalf of the group, in a summary fashion. We do not intend to tell anecdote after anecdote.

That is essentially one of the two main things we would like to present to the committee.

Second, and we do not intend to belabour this either, we would like to bring to the committee certain political considerations. This is a political body and you are about to make a decision which is at least in part political. The Ombudsman is limited in what he can say about that and we would like to make certain representations to the committee members as parties of the Legislature with respect to the positions of those parties. Those are representations that will not be made unless we have standing. We would like to buttress the Ombudsman's report in that way.

As Mr. O'Reilly said, this is an unusual hearing. I would submit that the committee has full ability and power to control its own proceedings and to set whatever terms seem appropriate in the circumstances of each case. Contrary to what committee counsel has intimated, I do not think allowing standing for two groups, two large groups--and I should say, by way of introduction, our group represents at least 600 people who have signed for

membership in the committee of which Mr. Berger is co-chairman--these are two large, distinct groups with a very significant interest, and allowing them standing here, particularly if it is in a limited fashion, will in no way prejudice the committee in the future from dealing with matters as seems appropriate and expedient in other cases.

I would submit, for reasons of practicality, you probably cannot hear from groups in most cases, but this is not a usual hearing. The fact you are here today at a special session indicates that.

Those are our submissions with regard to why it is we would like standing. Before I hear your questions, I might say, by way of a suggestion, I have heard some discussion--we all have--about possible compromises. We could perhaps put one forth ourselves. We would be content to leave our submissions to the end of the presentations. In that fashion, if time is of crucial concern, if it is going to be a matter of not finishing and further delay, then perhaps the matter can be considered in that light and perhaps we might even withdraw our desire to make a submission.

1040

Furthermore, if it is done at the end, we will have heard all the submissions on behalf of the Ombudsman and the government. We will have a better understanding of the context in which we might make submissions and it will be easier to say whether we can add anything fruitful. However, I would emphasize, as Mr. O'Reilly did, that although we all have schedules and what have you, this is a very important matter. People have waited a very long time and I do not think the matter of an hour or two for certain submissions should govern.

I might also say, lastly, that in terms of the type of standing we are seeking, we do not seek what might be called full standing. We do not need or want a right to cross-examine witnesses. We wish to make a presentation and field your questions if you have any. That is all. The presentation would be in the nature of 15 minutes to half an hour maximum. Subject to your questions, that might be the end of it. That is what we contemplate and I think it is a reasonable proposal, particularly if it is left to the end of the list, as it were, and it can be dealt with at that time. I certainly do not think it would be fair to make a decision at this time to deny these people a voice before we even know what kind of hearing we are going to have or how long it is going to take.

Mr. Kerzner: What are the political considerations that you say your group can bring to bear on the discussion but that the Ombudsman cannot make submissions about or consider?

Mr. Mazurek: The positions that the various parties have taken at this time. They are all elected representatives and they were elected after saying certain things to the public. We would like to remind the committee members of what it is their various parties said to the public before the last election and, for that matter, since the last election. I believe, under the terms of his appointment, the Ombudsman cannot get into those things and I also understand he does not intend to get into those things. I think it is an appropriate consideration for the committee. It is not the governing consideration, it is not the only consideration, but it is a consideration.

Mr. Kerzner: May I take it that the Ombudsman's position on this request for standing is the same as the last one? Then I think we should give

the ministry an opportunity, if it has anything to say, on both requests. Let us hear what it has to say, if anything. Mr. Moore probably wants to speak for the ministry.

Mr. Moore: Just very briefly, Mr. Kerzner, Mr. Chairman and members of the committee, the ministry really does not take any position with respect to the request for standing. I think that is a matter for the committee to determine in accordance with whatever it deems to be appropriate in this case. I would suggest, though, that if some form of standing were to be granted, it would be desirable that it be done in such a way as to enable the ministry an opportunity to respond to whatever it is that is being put forward. I just make that general comment, but aside from that, I really take no position. I think the matter is in your hands to determine.

Mr. Kerzner: Before I tell the committee what I think, there may be some questions that committee members have.

Mr. Chairman: We have four committee members who have indicated a desire to speak: Mr. Shymko, Mr. McLean, Mr. Philip and Mr. Offer.

Mr. Shymko: Mr. Chairman, I think all of us who have been members of this committee over a number of years have some fears as to the precedent-setting nature of allowing witnesses who are represented or deemed to be represented by the Ombudsman to join him, in addition to the Ombudsman, in presenting their case. I initially had some reservations about this, but as I look at the press release and the statement made by the Ombudsman on the presentation of his report, the Ombudsman stated that he believes special circumstances or urgency exist in this case and this is why he is not submitting this as part of his annual report but is making this a special report and stresses the urgency on a priority basis of this particular case.

Although tradition dictates that in recommendation-denied cases, if members of the public have anything to add or are upset either with the Ombudsman's presentation, as I think Mr. Philip pointed out, we have a subcommittee which would listen to the individual. Rarely do I recall groups going to the subcommittee, but individuals certainly made their cases and the subcommittee would report.

I think this committee is flexible enough in the decision-making process on procedure not to take an ossified stand, restrictive and based on tradition, and is flexible enough to have the discretion to make a special allowance in a situation that is very unique.

I think it is the Ombudsman--and he may correct me--who called this one of the biggest frauds in the history of Ontario, at least in the nature of the whole situation of Argosy. I urge members of the committee and my colleagues to allow for a brief presentation. I hope both Mr. O'Reilly and the representative of Mr. Berger understand that we have been given by the three House leaders a very strict schedule which, in my opinion, is absurd. We have to complete this by the end of Thursday. There is no way. In my simple approach to this, I think a child can tell you that in the vastness of this problem, to complete it over four days is sheer absurdity.

We have asked for more time and if the representative of Mr. Berger and Mr. O'Reilly could understand that because of these circumstances of time limitations, if they could limit their presentation to a reasonable time--I do not know what reasonable is; to politicians, I guess, it means hours--I think we could allow a presentation by Mr. O'Reilly and whoever represents Mr. Berger, the two groups, to be made now.

The problem I have in scheduling it at the end, with all due respect to the request that I have just heard, is that I think the ministry should have an opportunity to respond at any stage of the deliberations. To say that they will speak at the end deprives the ministry of a fundamental right to comment on what it has heard. I therefore urge, just as we have had this case or this particular question at the first, at the very beginning of our agenda last week when we met in camera, that we allow this morning and complete by 12:30 before the recess to have the representatives of the two groups make their representations and take it from there. On the basis of these problems, I suggest we request of the three House leaders that we must have an extension of time, at least for a minimum additional two days.

Mr. McLean: I am sure we do not need a lot of time for you to tell us what type of people are involved. I have many people in my constituency who are involved. I know the type of people and I do not think we should be wasting the time of the committee for you to tell us the type of people who are involved. That is what you indicate you want to be part of your presentation.

Over the weekend and part of last week, I reviewed the file from the Ombudsman and the government and I can see where the Ombudsman has a very detailed report. A lot of what is in that report is very likely what you also want to indicate to us to support that report. When I reviewed the Ombudsman's report and what his recommendations were, I found they were very detailed. I think the time of the committee is of the essence and I believe there is enough in that report for me to make a decision when the time comes without adding presentations and taking further time away from the committee.

Mr. Philip: I am going to move a motion that I think will save the precedent of the committee and perhaps satisfy the wishes of the deputations. I think it is wrong to grant them standing. However, this committee has the right to call witnesses. In the light of the minister's statements that have been carried in the press, suggesting that these somehow are investors similar to people who invest in the stock market, I would suggest it is appropriate for us to find out who these people are and perhaps these two groups may be able to supply us with anecdotal information that will add information to that.

Mr. Chairman: Mr. Philip moves that on Wednesday, April 15, at 9 a.m., the committee call before it Miles O'Reilly and Ted Berger to question them on the people they are representing and their view of this matter, that they will not have standing before the committee but they will be treated in the same way as any other witness who would be called before this committee or any other committee to give information.

1050

Mr. Offer: A number of my questions have previously been asked and responded to, but if I might speak to Mr. Philip's motion, which he has just indicated, I am wondering if I might be able to get an understanding from counsel or from the clerk as to what is anticipated at 9 a.m. on Wednesday will be if it is not on the record and if it is not to give standing to a group?

Mr. Philip: Standing would indicate that they would have the right of cross-examination. We will simply call them as witnesses and they will answer our questions. As with any other witness, of course, they will be allowed to make an opening statement. I would anticipate a half an hour for each of them. I am concerned not to delay this. It is not our fault that we

have only four days. That was imposed on us. I am concerned that a lot of people have been out there waiting an awfully long time. I do not want to jeopardize their rights.

At the same time, since certain public statements have been made concerning who these people are, the two counsel for these people may well be able to shed some light as to exactly who they are. In that light, I would want to ask them that kind of question.

Mr. Offer: So the motion is designed to add these two parties as deputants and in order to do that we are extending the hours on Wednesday to commence one hour earlier to afford them 30 minutes each?

Mr. Philip: It would not in any way set any precedent for the committee. The committee has the right to call any witness it wishes who will add to its information. We have done that on many occasions. Usually it is a government official who would be called. But in the light of this, I would suggest that we call Mr. O'Reilly and Mr. Berger at 9 a.m. on Wednesday. The reason for 9 a.m. on Wednesday is that I just checked with Mr. Berger and he is not free at 9 a.m. tomorrow.

Mr. Shymko: I just wanted to comment on the motion. I understand giving one hour, from 9 a.m. to 10 a.m., as suggested by Mr. Philip, for each of the two representatives provide us with a half-hour statement. I see very little time for questions, if indeed what concerns Mr. Philip is questioning that we may want to address to the two witnesses.

I would suggest, if it were possible, we ask Mr. Philip whether or not a half-hour statement from each of them--

Mr. Philip: No. Mr. Berger said he would require 10 minutes and be open to questions.

Mr. Shymko: Is that all that would be required by both?

Mr. O'Reilly: I indicated 15 minutes.

Mr. Philip: That will then allow questioning from everyone.

Mr. Shymko: Then I will certainly support that motion.

Mr. Ashe: I sure have no problem in giving an extra hour's investment to hear the witnesses on that basis. In effect, they are being requested by this committee to appear as witnesses and on the basis that they are not given status, as already indicated, I also support the motion.

Mr. Hennessy: I think it is a step in the right direction. I think the people want to be represented. We are going in the right direction. If we have to meet at eight o'clock in the morning, let us come in at eight o'clock. If I had that much money involved, I would come here at five o'clock.

Mr. McLean: I have no objection to the nine o'clock meeting, but I certainly want to make it very clear that normally meetings sometimes do not get started until 10, 15 or 20 minutes late. I would hope we could have it done by 10 o'clock.

Mr. Chairman: Is there any further discussion on this motion? The committee has heard the motion. All in favour?

Motion agreed to.

Mr. O'Reilly: Mr. Chairman, perhaps to assist and speed up, I have prepared some briefs with respect to my representations, if I could give these to committee members.

Mr. Chairman: I call on the counsel.

Mr. Kerzner: Perhaps we can deal with the second preliminary matter, which I am afraid is likely to take us a bit longer. By way of introduction, on Thursday evening after meeting with some representatives of the ministry, they left me these two volumes of documents that they want to file and make use of when they come to their presentation.

I understand from the Office of the Ombudsman that it is opposed to the filing of these documents. I think what we must do at this stage, if we can, is to hear from both sides on that question and then deal with how much, if any, of the two volumes of paper will be accepted by the committee. It probably makes more sense if we start with the Ombudsman's representative--I guess Mrs. Meslin is going to deal with it--who can tell the committee why the Ombudsman is opposed to the tendering of all or any of these documents. Then we can hear from the ministry as to why they should be accepted. I am sure we will all have some questions.

Mrs. Meslin: We were also presented with these two books of documents on Thursday, April 9, late in the day. Glancing through them, we realized that we had never seen many of the documents before at all. This raised two concerns in our mind: The first and primary concern is the Ombudsman process itself. As the members certainly know, during the course of any investigation, the Ombudsman asks for full disclosure, at the beginning of the process, during the process and certainly before issuing a final report. At the stage of our tentative conclusions and recommendations, when we write the ministry and tell it what we think we may be going to decide, we indicate again to the ministry that anything that will assist us should be sent to us.

As you know, the Argosy investigating process went on for approximately seven years. Not until this past week were we given these documents. The concern about the Ombudsman process that we have is that the committee has never permitted new evidence or new documents to be introduced after our final report. There is no way we can answer to this; it would set a precedent for us and for the committee that we are very concerned about.

The second concern we have is the late receipt of these documents. As we said, we received them Thursday evening, but then counsel for the ministry asked us to return them Friday morning for some additions and some alterations. Dr. Anisman, one of our counsel, received his altered copy Friday evening, but our staff did not receive this altered copy until yesterday at 11 o'clock in the morning. We have had no time to read and study the documents we had not seen before and we are most disturbed by this. We raised our concerns with the committee's counsel, Mr. Kerzner, on Friday, and spoke also with counsel for the ministry yesterday.

We have had a great deal of soul-searching about this matter, mainly because we have the feeling that to say the documents should not be admitted may create the impression that the Ombudsman in some way is trying not to reveal or to hide documents that the public and certainly the committee should have before it. The Ombudsman has therefore instructed me to inform the committee that in the interests of openness and full disclosure, we will not

oppose these documents being introduced. However, we ask the committee to understand that since we have had no opportunity to study or analyze the documents, we will have great difficulty responding to questions relating to them. Also, by making this concession in our process, we want the committee to feel and understand that it will not set a precedent for future cases coming before the committee. We hope the committee will make some comment regarding this in its report..

Mr. Kerzner: That simplifies matters immeasurably. I understand Mr. Moore has brought 11 or 12 copies with him.

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Mr. Moore: I think there should be a dozen copies available, in addition to the one I provided to you, sir, which could be distributed.

Mr. Kerzner: Then I suggest they be distributed to the members of the committee who are here so that they will have a chance to look at some of them tonight, at lunch, early in the morning or whenever.

Mr. Ashe: I have two questions. I would like to direct one to our counsel as to whether he has had any opportunity even to peruse these massive volumes, appreciating that I know he did not have time to read them per se, to indicate in his view what might be new, what might be different, what might be significant.

More importantly, my questions and concerns are directed to the ministry's counsel as to with what possible justification it can come forth with two massive documents, not only at the 11th hour but at the 23rd hour and 59th minute of the process that has been going on for so long. I find that unbelievable. I appreciate and accept the response from the Ombudsman's office that even though it would be quite valid in using the argument, it has chosen not to do so, which is to its credit. However, that does not satisfy my concern as to why and how it could possibly happen. At the same time may be counsel could, from his point of view, review what was so revealing and different at this time, and most importantly, why at this time.

Mr. Kerzner: I am happy to give you my speculation because I cannot climb inside the ministry's head.

Mr. Ashe: Maybe we should let them answer first.

Mr. Kerzner: Maybe we should.

Mr. Moore: Perhaps I can give a brief outline. In the interests of expediting matters, I will not go through the full chronology I had intended in view of the position the Ombudsman has taken to the effect that the documents can go in.

One of the important issues in this proceeding obviously is the recommendation that public funds be used to compensate 50 per cent of the losses sustained by investors together with interest. You will be hearing over the next few days the position of the ministry representatives regarding the findings or conclusions of regulatory failure that obviously are an issue. Apart from that, there is a very significant issue of causation in this proceeding.

You will hear over the next few days the position of the ministry that

it is incumbent upon the Ombudsman and this committee to consider the role of others who had perhaps a greater role or a greater causation in these losses. I am speaking specifically of Argosy's banker and its agents and Argosy's auditor. It will be the position at the end of this proceeding that those groups had greater access and greater ability to monitor, and in fact had greater knowledge of what was going on, than did any ministry or agency representative.

Those issues are not new issues. They have been raised by many of the complainants in their letters to the Ombudsman and to the ministry in which it has been quite clear, in both those letters and press reports, that very significant reliance has been placed by investors on representations made by them, for example, by Argosy's banker to the effect that the company was in sound financial condition and to the effect that the principals in the company were of the highest integrity and had the highest expertise. There were really some quite extraordinary representations that were forthcoming.

This you will see in these materials, which I might add are not by and large government materials; they are materials of other parties. I will not go through the full chronology in view of the position taken by the Ombudsman this morning, but it has been apparent from the outset that these issues were considered to be of importance by the ministry.

They were alluded to in the response of Mr. Beck on behalf of the Ontario Securities Commission and by the minister himself in dealing with both the interim and filed reports of the Ombudsman. It is not a question of a new issue arising or of new materials being slipped in. I think it is important to recognize as well that this is very unusual, and I hope, a unique situation in the sense that the volume of documents that everybody had to deal with in this case was quite extraordinary.

If we really wanted to, we could bring enough musty old boxes to cover the walls of this room. That is a problem the Ombudsman had to deal with and that all the parties had to deal with. An attempt has been made to extract--I know these volumes appear to be very lengthy, but believe me, it has been a culling down of nongovernment documents that we feel should be before this committee so that all the facts are out on the table and so that you can see what happened, so that members of the public can see what happened. Without that occurring, it would be a mistake for this committee to consider the recommendation.

I intended to go through some of the documents to illustrate just what we are talking about here. I am conscious of the time constraints and in view of the position taken by the Ombudsman, I propose not to do that, subject to the wishes of members of this committee. I will be happy to, but in order to get on with the matter, those will come out later rather than now if that seems to be appropriate.

Mr. Ashe: I think part of my question was answered in terms of what the gist of the material is, but with all due respect, I do not think you answered why it came in Thursday, Friday and Sunday; yesterday, two days ago and three days ago.

Mr. Moore: As I say, the issues have been raised from the beginning. In the response to the Ombudsman's interim report it was made very clear that reliance was placed upon the auditors, that reliance was placed upon the bank

by the ministry. Indeed it is self-evident from the materials that this was so in the case of the investors.

An invitation was made to meet again to discuss those issues from the Ombudsman's point of view, which I am advised was not followed up on. The documents do not raise any new issues. They are third-party documents that have always been available. It is not a case of--

Mr. Ashe: You are not answering my question. The interim report was tabled 17 months ago.

Mr. Moore: Yes.

Mr. Ashe: The final report was tabled some five months ago. Why now? Why not a month ago, two months ago, three months ago, eight months ago, 10 months ago?

Mr. Moore: As an example, some of the documents are complainants' documents that I thought the Ombudsman would have. Some of the documents are newspaper clippings, which are obviously public documents. In the end, after all, it is not our investigation to conduct. I think we have an obligation, as does the committee, to try to ensure that all the issues and relative information are before this committee. In preparing for these proceedings, given--

Mr. Philip: You also have an obligation of full disclosure from the government to the Ombudsman.

Mr. Moore: With respect, there has been no suggestion that anything has been hidden, to my knowledge. As I say, there were literally hundreds upon hundreds of boxes of documents, not all of which were in the custody or possession of the ministry. Many of them have been in the possession of the Ontario Provincial Police in the course of the criminal proceedings. Some were in the possession of the receiver. Some were in the possession of the ministry. This is a problem everybody has faced in preparing for this proceeding.

From our point of view, the issue of the role of other parties and the issue of causation were not and have not been adequately addressed in the Ombudsman's report. To ensure that all the relevant considerations will be taken into account by this committee, we felt it appropriate to extract from the documents that, to the best of my knowledge, were available among, admittedly, 300 or 400 boxes that are scattered in various places. We felt it was important to try to extract in a limited way some of the materials that make it clear those are substantive and substantial considerations for this committee. That has been no secret, nor have the documents been withheld or hidden in any way.

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Mr. Ashe: I think I have the answer, much to the embarrassment of the witness, that the ministry has the same problem we frankly all suffer from time to time, why do today what we can put off until tomorrow. The crunch was only on as the date of today approached very rapidly a week or so ago.

Mr. Moore: Perhaps I can add that the response throughout the process has been to flag these issues. They are not government documents, nor do we say they are all the documents that may exist in the hands of third

parties. They are documents that were available as part of the investigation of the Ombudsman, and quite frankly, it is our position that the Ombudsman's office had the ability and really should have obtained these documents itself from the third parties. They are not government documents. They are not ministry documents. Many of them are documents relating to investors.

Mr. Philip: Come on now, you know as well as I do that the Ombudsman does not have the jurisdiction to go to private companies and seize documents like that, but you did and you did not do it, and you did not disclose it to the Ombudsman. So stop giving us this kind of runaround.

Mr. Moore: I am sorry. The Ombudsman does have the power to get information from any person that is relevant to the subject matter of his inquiry. In my submission, the subject matter of the inquiry in this case, among others, is the extent of governmental responsibility. It will be submitted to you that this committee ought not to adopt a recommendation that public moneys be used to reimburse investors if the effect of that is to make the government a guarantor or a source of funds in respect of the role of private entities, many of which are insured and many of which had greater access to information than did the government.

Indeed, the Ombudsman, in both his interim and final reports, has recognized the relevance of the other causative factors that went into this. Unfortunately, from our point of view, it did not give any weight or any analysis with respect to the role of the bank and the role of the auditors in that process and gave no discount for that. Clearly, that is relevant and could have been investigated under the provisions of the act.

Mr. Philip: May we have a comment on that point from Mrs. Meslin?

Mrs. Meslin: I would like to point out that as the committee well knows, the Ombudsman's investigation is not an adversarial proceeding. When we go in to do an investigation, we hope we will have and we rely on the co-operation of ministry officials and anyone else who will give us any information they feel we must have in order to make a final decision.

When Mr. Moore indicates that all those documents were there for the having, he also indicated very clearly that there were rooms full of documents. When we went to the OPP to request those documents, we clearly asked for all those documents that related to Argosy, both from the ministry's point of view and the Ontario Securities Commission's point of view.

When we used the documents we had, when we examined them and built our case, as I said earlier, we sent our preliminary report to the ministry and awaited its response, which we had assumed would include any of these matters or all of these matters Mr. Moore has raised. They were not raised. The documents were not sent to us.

I say again that I do not think we should be told at the 11th hour that they were all there for us to see had we only decided to go through them all. We had no reason to go through them all. We did what we felt was reasonable. We did what we must do as investigators. We indicated to the ministry that we had based our case on those things. We sent documents.

Dr. Hill: Let me stress again that we had quite a discussion on this in terms of my team and the lawyers. It is true that I believe in the principle of openness and, therefore, I felt that documents should be let in. But you put us in a terribly untenable position. If a great discussion occurs

about those documents and if a lot of questions are raised about them, we are simply not in a position to respond, having received that material at the last minute. We will not be able to respond to questions about those documents.

Mr. Philip: I think Dr. Hill is being overly generous. I do not accept the fact that someone can, at the last minute, present what amounts to new information. I recognize that we are not just an adjudicative body but also an investigative body, but if this were a court of law, you would not be allowed by a judge to get away with this kind of thing. It puts the Ombudsman at a great disadvantage.

One of the things that I have been very laudatory of in this Ombudsman is the process of developing a statement of facts, in which the ministry that is in disagreement with the Ombudsman and the Ombudsman can agree to a statement of facts. I am wondering what success you had with the ministry in coming to an agreement of a statement of facts, since I do not have a statement of facts before me.

Mrs. Meslin: I must say that we worked long and hard at trying to develop a statement of facts and had a great many of the facts agreed to. However, we did come to two or three very important issues to both sides that we could not agree on, and at this stage we do not have a statement of facts.

Mr. Philip: We are not only faced with the confusion of not having a statement of facts that are agreed on by both the ministry and the Ombudsman, but also we have the preposterous situation in which the ministry now, at the last minute, wants to table more documents that the Ombudsman has not had an opportunity to see and that we are supposed to somehow fit into the procedure.

I have grave concerns. We do have a process set up, and I think the Ombudsman's process in this province is one of the best in the world. I do not think he has enough jurisdiction but that is a different issue. I strongly object to tinkering with that process. It is an unfair advantage to the side of the ministry and a disadvantage to the investors to allow this information to be tabled at this point. I would vote against allowing the ministry to do so.

Mr. Shymko: I am pleased to hear that the Ombudsman has decided to allow these two volumes to be presented. The Ombudsman was placed in an awkward situation as an institution that is out there to investigate, so that justice is done or perceived to be done. The Ombudsman was in a very delicate situation to say no. Sometimes in recommendation-denied cases, even in the last few days, we obtain a letter or some piece of evidence that either strengthens the Ombudsman's recommendation or strengthens another argument opposed to it.

The problem I see is that an investigative process, which is basically what the Ombudsman's office is, is a process of investigation, and the report finalizing the results of that investigation has now become an adversarial process. The two processes are quite different. If, indeed, the ministry in filing these two volumes--and they are voluminous volumes--at the last minute intended to use this as a tactic or a strategy of an adversarial nature, somehow to question the report and the process used in the report, I am very disturbed by that.

I do not think the ministry answered clearly the question by Mr. Ashe as to why it did wait so long. I just want to ask the ministry once again, was some of that documentation available to you earlier than a week ago or a month

ago or a year ago? Was that evidence somewhere there, and the problem was simply that the ministry did not search hard enough or long enough or carefully enough to dig that out?

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Mr. Moore: Perhaps I can respond to both comments. As I understand it, the bulk of the information was either in the hands of complainants, in some cases, or was at the Ontario Provincial Police offices, where a great bulk of the material was gathered together for the criminal investigation.

Part of the problem that everyone had, including the Ombudsman, is that the criminal proceedings were pending and went on for some considerable time. As I understand it, the bulk of the documents were down at the OPP offices. I just want to assure members of the committee that this is not a case of some adversarial tactic of springing some new issue. I want to emphasize that.

For example, you have heard from Mr. Berger who applied for standing earlier this today. It is evident from his own comments--and this was quoted in a newspaper article on February 22, 1981; this is one of the documents in this book--"My wife worked at the Royal Bank and the manager at her branch and another branch said that Argosy was a valued customer. We checked with our lawyer, who also told us to go ahead with the investment because it looked good."

Then again, in August 1986, Mr. Berger said: "I borrowed money from the Royal Bank after the bank manager there told us Argosy was a good company, that it was in excellent shape and he had dealt with the company three or four years and that it has been in business for 10 years. The Royal delayed closing in on the company, even after it began to occasionally default on some interest obligations as early as January 1979."

I point that out to emphasize the fact that the issue of the bank involvement and responsibility is something that has been raised by the investors themselves, and many of these documents go to that issue. For example, at the same time Mr. Berger was investing money, one of the documents--

Mr. Shymko: If I may interrupt for a minute, my question is not to go into the details. We know that your documentation will impact in a major way on the amount of compensation, and you have mentioned that there is the causation factor which should be proportional to whatever compensation. We know that. My question is not to have you detail parts of that documentation which may have been quoted in the press.

You said to this committee, "We are not raising any new issue." No one is raising a new issue, yet you said, "We have substantial and substantive documentation." When it is substantive and substantial, obviously it will have a substantial impact on the recommendation by the Ombudsman. When you say you are not raising anything new, yet you present material that may substantially alter the recommendation, that certainly impacts in a major way and is a concern to all of us by the lateness of your presentation of these things, assuming that the Ombudsman had this.

The Ombudsman assumed that all he received was given to him, including the OPP investigation. I may ask the Ombudsman in a minute whether these things were handed to him. Can you say that it is fair at this stage to present the Ombudsman with material that you say will substantially affect his recommendation at this late date?

Mr. Moore: What I suggested, intended to say and, I think, did say is that these issues are substantive and substantial issues. They have been on the table from the very beginning. For example, the document I was going to turn to next was a letter to an investor in August 1979--

Mr. Shymko: We saw that.

Mr. Moore: --in which the Royal Bank is saying this is a very responsible and reputable company.

Mr. Shymko: Are you saying that this document was available to the Ombudsman a year ago?

Mr. Moore: Certainly. It is a letter to an investor; it is not a letter--

Mr. Shymko: Did he have access to that in his investigation?

Mr. Moore: I do not have a breakdown of every investor who has written to the Ombudsman, but I presume so, from the material that was filed with you this morning, the selected excerpts from complaints that we received yesterday. In those materials themselves, many of the investors refer to the role of the bank and others in which they placed reliance, so it is not as if the ministry is attempting to create or raise a new issue or take anybody by surprise.

Mr. Shymko: I understand that.

Mr. Moore: That is really not what is happening here.

Mr. Shymko: But you will admit that it is very unusual at this very late stage to present these volumes of documentation. It is rather unusual.

I just want to ask the Ombudsman, if the bulk of the documentation is from the OPP investigation, because this was in the courts, you obviously were prevented having access to that.

Mrs. Meslin: No, no.

Mr. Shymko: Can you comment on the fact that this thing was available to you all the time and that you should have had the documentation?

Dr. Hill: Mrs. Meslin will answer the specifics of your question, but we do not know what is in those documents. There are two massive tomes before us. We do not know what else is in there. We have not had a chance to peruse or study them; my staff has not had a chance to peruse or study them. That is what worries me. The basic principle of fairness has not been observed in this situation.

Mrs. Meslin: First of all, after the criminal prosecution, we did have access to the OPP documents, but, for instance, Mr. Moore has not mentioned Royal Bank documents to which we did not have access. We never had them.

In addition, the ministry never raised with us the point that any of the documents it now brings forward were of significance, so that we might look at them. What we have done is scan this and say, "My God, I have not seen this, I have seen this and I have not seen this." Our sense of it is that this is an

unfair way of doing it but, as the Ombudsman has said, we want this procedure to go forward and we think we are prepared to stand on his decision to let the documents in.

Mr. Shymko: My dilemma is that it was to the advantage of the ministry to stress the importance of these documents in presenting its case. I address the ministry representative once again. Why did you not give substantive weight to these documents when you were passing them on to the ministry, even a month ago?

Mr. Moore: Quite frankly, it came as a great surprise to me to learn, for example, that the Ombudsman did not have some of the documents written to investors from the bank in which the principals of these companies were described in glowing terms. Many of the letters written to the Ombudsman and elsewhere refer to this, and in formulating a recommendation that public moneys be used to compensate for a portion of these losses, I would have thought that where investors are indicating reliance upon other parties, that would form part of the investigation. It is quite surprising to me that the Ombudsman did not have some of these materials.

Mr. Philip: On a supplementary: It is surprising to me, according to the process, that when the Ombudsman went to you and said: "Here are my findings. What is your response?" you did not bring forward the documents at that time. You had that opportunity, that is the process, and to bring it forward now is like getting an extra last kick at the can. I do not see any justification for your actions.

Mr. Moore: Perhaps I can deal with the response that was forthcoming to the interim report. There was a letter dated March 3, 1986, which is in your briefing materials, from the chairman of the Ontario Securities Commission. It goes on for some 20 pages and includes a very voluminous report from Mr. Stransman. In that letter--I believe it is tab 19 in the materials--starting at page 11, there is reference to the Royal Bank and the fact that the commission placed reliance in its review of the series I debenture upon the increase in the line by the Royal Bank.

Mr. Kerzner: I am sorry to interrupt. Let us be fair to the Ombudsman. All that directs its attention to is the fact that the bank was going to increase the line of credit if the debenture was approved. It does not raise in any way the fact that the bank was writing laudatory testimonials to the investors or might have been writing them at a time when another branch of the bank was investigating the financial viability of Argosy.

That is not what the chairman is raising in that letter. He is simply referring to a single letter that was written to the commission, that is in the Stransman report, that was given to the Ombudsman and that is in these briefing materials.

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Mr. Moore: But what it is doing is flagging the role of the bank, and that role has been flagged by the complainants, the investors themselves, in their own correspondence and in their own statements. As I say, I would have thought that is something this committee would want to consider.

Mr. Kerzner: But in terms of what the commission raised, the commission raised solely the fact that the bank had enough faith in Argosy to increase its line of credit if the series I debentures were approved, and that

is the only issue that is flagged in this part of the report. None of the other issues regarding the Royal Bank are flagged.

Mr. Moore: The letters we are referring to were not addressed to the commission; they were addressed to the investors. I will not read it all to you, but the letter went on in some detail, referring to the role of the auditors.

Mr. Kerzner: But Mrs. Meslin's point is that in a case--and I am not talking about a case where the file is a quarter of an inch thick; I am talking about a case in which there are rooms full of documents--the Ombudsman's point is that the ministry has at least some obligation to point him towards which of the 400 or 500 or 600 file boxes he might want to take a peek at.

Mr. Moore: The 400 or 500 file boxes were in the custody of the OPP.

Mr. Kerzner: But you had access to them.

Mr. Moore: As did the Ombudsman.

Mr. Kerzner: Do you really think the OPP would have said to the ministry a year ago, "Sorry, you cannot look through these boxes and dig some documents out"? Do you want the committee to accept that?

Mr. Moore: No, I do not think they would have, but was the question raised by the Ombudsman?

Mr. Shymko: Could I just wrap up my question to the Ombudsman? Apparently, what I see here is the same problem the Ombudsman addressed in his recommendations: the assumptions and the lack of communication between the Ontario Securities Commission and the registrar of mortgage brokers. You assumed so many things that apparently were not the case.

Dr. Hill, I wonder, do you or did you have access, for example, to documentation from the Royal Bank of Canada?

Dr. Hill: No.

Mr. Shymko: Do you by mandate have the right to such access?

Mrs. Meslin: Yes.

Mr. Shymko: So you could have pursued it and obtained such access?

Mrs. Meslin: Yes, we could have, but we had no reason to. There was nothing in anything that the ministry indicated where it was relying on a particular thing it was sending to us, so that we would then go and look at other documents. There is a particular kind of reliance that you must expect when the ministry is answering our preliminary report. Mr. Stransman, when he was responding for the ministry, included a raft of documentation. It was done. It was not that there were no documents.

Mr. Shymko: Just so we are clear, when Mr. Philip indicated that you are prevented by mandate from getting certain things, in this case, there is nothing there to prevent you from that?

Mrs. Meslin: No.

Mr. Shymko: Did you have a chance to look at some of the materials? If so, do you feel this may have a substantial impact on your recommendations?

Mrs. Meslin: I do not know.

Mr. Shymko: Can you make such a statement? You cannot.

Dr. Hill: We do not know, because the revised documents got to us on Sunday.

Mr. Shymko: It is not fair for me to ask that. I apologize.

Dr. Hill: This is Monday.

Mrs. Meslin: We have gone briefly through the index and tried to go through them very quickly to see if, just off the top of our heads, there were documents we think we have never seen before.

Mr. Shymko: The dilemma of this committee is what weight we are to give to this documentation, in all fairness, if it will substantially alter your recommendations, the process you followed and the lack of access to that information. That is the crucial issue. We have to accept this documentation, but in the process of questioning, do you feel the weight of the arguments should be on the process you followed, the material you had and the recommendations you made, and this should be minimized?

Can you fairly say we should not look at it? Do you fairly say we should adjourn today and give you another month, so that you have enough time to look at this documentation and prepare an adequate response? What is your suggestion, Dr. Hill, to be fair and just and to allow our committee to make a just and fair decision?

Dr. Hill: Fairness and justice are very difficult things to address at this point. I think we will argue, let them in and we will argue as best we can, but you must take into account that we are limited. We got this on Sunday night. I have not had a chance to look at any of it and my staff have skimmed it briefly. I am saying, as long as you recognize how much weight to put on the fact that the Ombudsman has had no opportunity to study those documents, and as Mr. Philip said earlier, you cannot even do that in a court of law.

Mr. McLean: My question is, to continue on, do you intend to use these documents basically in your presentation?

Mr. Moore: The sole purpose of the documents is to highlight the fact that the role and potential responsibility--and I put it no higher than that--of third parties, which is an issue that has been there all along, is something that this committee should give very careful consideration to before it makes a recommendation that the 50 per cent of the losses plus interest which could exceed \$30 or \$40 million be borne out of the public purse. If the effect of that is to really compensate for the acts of others, then that is an important issue of principle that goes beyond the parameters of that case. In fairness to the ministry, that is a point that was specifically raised by the response of the minister on August 7, 1986, which again is in your briefing materials, that the role of third parties should be taken into account here.

Mr. McLean: Just a minute. Will over 50 per cent of your presentation be given to us out of that material?

Mr. Moore: No.

Mr. McLean: What percentage will?

Mr. Moore: I would be surprised if more than five or six documents out of this material is referred to in any detail. For example, I can tell you that one of the tabs relates to some bank documents. We are not going to take you through all of that. There may be one or two that we would point to. There is a relatively thin section dealing with representations made to investors which is consistent with the newspaper articles that I have alluded to and which contain some quite extraordinary and laudatory comments in respect of the principals of these companies. We will refer you to a couple of those letters. But the point is, we are not going to get into a lengthy trial and be taking you through from beginning to end of two thick books of documents and prolong this procedure indefinitely; no, we do not intend to do that.

Mr. McLean: I just find it totally unacceptable, the whole procedure, what they are imposing on us. However, I compliment the Ombudsman on his action in dealing with it.

Mr. Ashe: Hopefully we will wind this aspect up. I think the ministry, through counsel, has got the message that we are a little unhappy about the timing--forget about the content or the substance--the timing of the tabling of these volumes.

As the Ombudsman has accepted them, it would be rather untoward if the committee denied the tabling if the Ombudsman was not opposing them. Having said that, we have also heard that there will be some reference to this material in the presentation of the ministry and its agencies in the next couple of days.

I am asking this in the form of a question, probably to Mrs. Meslin or Dr. Hill--I presume on the same basis that by Thursday when you have your opportunity to review or rebut, if you will, any of Tuesday's and Wednesday's representations, that you will be in somewhat, again appreciating the time and the volumes, of a position to respond at that time.

Dr. Hill: We are going to try. As I said again earlier, take cognizance of our limitations, that is all.

Mr. Ashe: To be sure, Dr. Hill. I think on that basis we accept the tabling of these documents, and will get on with the business at hand.

Mr. Philip: I think the Ombudsman was placed in a very awkward position from a public relations point of view. He admits that it is an unusual and unreasonable precedent. I feel that it is an unusual and unreasonable precedent, and indeed a distortion of the process that is in place. I do not think that because the Ombudsman is in an awkward position, namely that he could be seen by some as somehow hiding evidence or being opposed to new evidence, that we should necessarily be in that position ourselves. I just fail to see why new evidence should be introduced at this time.

The Ombudsman has taken into account that there was partial responsibility in the award. He did not give 100 per cent plus interest; he gave much less. The documents that you are tabling now should have been tabled with the Ombudsman in full disclosure at the time in which you tabled your response. You did not do that. What it amounts to is getting a second kick at

the can. I ask that you take the vote. I will vote against tabling the new documents at this hour.

Mr. Kerzner: I want just to add that most of the members to my right have, I think, correctly put their finger on what the issue is; that is, since the Ombudsman does not oppose the tendering of the documents, in my opinion, it would be a mistake for the committee to refuse to receive them. Those members who commented that the fact the committee receives them does not resolve the question of the weight that is to be put on them, put the right emphasis on the problem.

In the circumstances, my recommendation is that the committee ought to accept it regardless of how it feels about the inherent fairness or unfairness. The Ombudsman's position has removed the necessity of the committee weighing that and making a decision on that motion.

Mr. Shymko: On a point of order, Mr. Chairman: Was there a motion for a vote on this? I do not recall one.

Mr. Philip: I asked that a vote be taken.

Mr. Chairman: All in favour of tabling the two volumes that have been presented by the ministry? Opposed?

Motion agreed to.

Mr. Kerzner: If we can get those distributed, we can probably get started. It is quite obvious that there were a lot of losers in this whole process, but we know of two sets of winners; the legal profession and the paper industry.

Mr. Moore: What we will be doing before tomorrow is segregating as best we can the relatively few documents to which specific reference will be made in these materials. Obviously, they are there, and if there are questions arising out of them they can be asked but, to assist the committee and the whole process, we will be advising Mr. Kerzner of what, specifically, we will be--

Mr. Philip: Why table all these documents when only certain documents are going to be relevant to your case?

Mr. Moore: Well, because there may be questions that arise that would call upon a reference to other documents. In order to assist the process, we will be dealing with Mr. Kerzner in that regard.

Mr. Shymko: Could I ask if you could give us an idea of which documents are important so that maybe, in our preparation, we could focus on certain parts of this and not go--for bedtime reading.

Mr. Moore: Yes, indeed. In the thinner of the two books, under tab D-2, there is collected a series of letters from the Royal Bank to various investors and other entities. That particular tab is about 30 pages in length. You can get a flavour--I will leave you just some page references: pages 367, 373, 375 and 378.

It is apparent from the materials that, unknown certainly to any governmental agency at the time, there had been a study of the Argosy mortgage portfolio commissioned in the spring of 1979. The results of that study are at tab C-1.

You will recall, of course, that the ultimate demise of Argosy was on March 19, 1980.

There are some internal materials collected under tab D-3 that would indicate some concerns of the bank. I will leave you the page reference for a summary of those events: page 467 and onwards for about five or six pages.

Of course, the Ontario Securities Commission and its responses indicate a reliance upon the auditors, but just to give you a sense of the kinds of inquiries that would be made in the process of completing the audit as compared with the kinds of access that the commission personnel would normally have, the documents at tab B-3, which I do not think is that thick a tab, will give you a sense of the kind of inquiries and the information that would have been available before the audited financial statements were issued with the clean audit report.

There are some other materials in here that may be useful for reference purposes, such as Argosy marketing materials and the like. It may be useful to have it before you in the course of dealing with various questions that come up. I think that what I have identified are the main areas that will likely be alluded to.

Mr. Kerzner: Dr. Hill, in asking you and your staff to address the committee on the circumstances of the complaint--the matters that have been investigated and your findings, conclusions and recommendations--I understand that you will make a statement at the outset. Following your statement, Gail Morrison of your staff will take the committee through the details.

Dr. Hill: That is correct.

Mr. Kerzner: Would you like to begin?

Dr. Hill: Before I start, I think that this is going to be a fairly long proceeding and that I should introduce some of the people representing me, who will be speaking and counselling on my behalf throughout the next four or five days: Eleanor Meslin, my executive director, is in charge of administration in the Office of the Ombudsman; Gail Morrison, my counsel and director of investigations is sitting right behind me; and Dr. Philip Anisman is my adviser and counsel in this case.

Dr. Anisman has taught securities law for many years in Ontario. He has advised governments in a number of Commonwealth countries on securities matters and is currently a member of the firm of Goodman and Carr at the securities bar.

Last, sitting behind me is Paula Boothby, assistant director and chief investigative officer in the Argosy case.

Mrs. Morrison and her investigative team will field the questions directed to my office during these proceedings.

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I have about a 15-minute statement to read.

Mr. Chairman and members of the standing committee, you have before you an enormous collection of papers, supplied to you so that you may understand this case, the case we call simply "Argosy." Nevertheless, Argosy involves

many complainants and much complex information. As Ombudsman, it has been my duty--indeed, my statutory duty--to winnow the information resulting from this investigation, to draw conclusions about the conduct of government and to make recommendations which I think follow from those conclusions. The governmental organizations involved have not agreed with me, and that is why we are here.

As Ombudsman, I must decide whether acts or omissions of the governmental organizations were wrong or unreasonable. The statute states that my function "is to investigate any decision or recommendation made or any act done or omitted in the course of the administration of a governmental organization."

I shall attempt in this introduction to present to you an overview of the circumstances that have led me, from my perspective as Ombudsman, to recommend that persons who lost their savings by investing in Argosy be compensated in part.

I have asked the clerk to hand out a brief profile of complainants while I quote the following from my report. This may answer some questions, ladies and gentlemen. I have the profile which speaks to the people involved.

"Few of the complainants are young. Some have died before the investigation could be completed. Their ages range from 35 to 93, with the majority of those whose ages have been ascertained being over 60 years old.

"The amounts invested by each complainant are relatively small in absolute terms, but represent the life savings of many of the complainants. Many borrowed money to invest, or invested proceeds from retirement funds or the sale of a business. Several complainants stated that they had invested money belonging to their elderly parents in an attempt to improve their circumstances. One complainant invested the proceeds of a judgement obtained by his daughter as a result of her injury in a motor vehicle accident, while another invested the money he had saved for his children's college education. Many complainants put small amounts in each of several Argosy projects, believing that such investments would be independent of one another. Others purchased an investment for each member of the family, believing all to be sound investments.

"Nor did these investors invest without making inquiries. Many contacted major banks and received good reports on the financial health of Argosy; some complainants have submitted copies of letters they received from these banks. Others contacted the Ministry of Consumer and Commercial Relations, the Ontario Securities Commission and other government offices and received no indication that the company was anything but reputable. Many received solicitations for further investments only weeks before the ultimate collapse of the Argosy group of companies.

"Given the relative importance to these investors of the sums of money invested, it is not surprising that many allege that serious consequences have flowed from their losses. One indicated that the subsequent illness and death of her spouse was directly related to the stress of losing his life savings. Others have had to return to work from retirement or move in with children when their retirement funds disappeared. Depression, despondency, and mental anguish are cited by many of my complainants as directly related to their reduced financial circumstances."

The complainants have told me they cannot understand the government's actions in this case. Keep in mind that these complainants are not

sophisticated people in a financial sense. I have given you a profile which shows the kind of people they are, what they have lost, how they have coped. The single most repeated expression of their bewilderment and sense of betrayal by the regulatory agencies they trusted is: "But they knew he was a crook. They agreed he had a record for fraud. How could they let him take our money?" We all know that such a heartfelt cry oversimplifies the issues, but we cannot ignore or forget it. Indeed, the ordinary citizen's understanding is that the role of those who regulate financial affairs is to protect the public from dishonest people.

I am not going to try to lead you through all the facts of this investigation, nor am I going to make complex legal arguments. I am simply not a lawyer. I have staff here to help me there. The minister has agreed with the substance of five of our six recommendations. The major question remaining is, "Should compensation be paid or should the investors bear the entire loss?"

I do not suggest that the losses suffered by those who put their faith in Argosy should be borne exclusively by the government. I do suggest that these losses be shared. It is my position that, while the complainants must accept some of the loss, they do not deserve it all.

Why do I think the regulators should accept responsibility? Because the two government agencies dealing with Argosy, the registrar of mortgage brokers and the Ontario Securities Commission, failed adequately to investigate Argosy's activities despite clear indications that they should do so, did not establish procedures to ensure that information would be shared between them, did not pass on to each other information which they had about Argosy and they did not ask each other whether such information even existed.

Moreover, the Ontario Securities Commission had no internal transmission procedures and incorrectly interpreted its own act by concluding that it did not apply to Argosy's syndicated mortgages. But for these errors and omissions, investors would not have suffered the losses they did.

There are those who would argue that the complainants accepted a risk in investing their money. In my view, they did accept some risk. But I do not believe they accepted the risk of inadequate regulation. Investors must always be aware that they accept some risk when they make an investment. That risk, however, is the risk of the enterprise, not the risk of regulatory failure.

Regulatory failure was not the only cause of the loss. The loss was also caused by the fraud of Argosy's principals. Recognizing that there were two major interconnected causes of the investors' losses and acknowledging that the investors accepted some risk, I have recommended that less than full compensation be paid to investors. Half of their losses seems reasonable in the circumstances. It is less than has been granted in Ontario in the past and less than the federal government provided after the recent bank failures.

How did those losses come about? Argosy sold three types of investment instruments to investors. They were interests in syndicated mortgages, debentures in two series and registered retirement savings plans. The total loss to investors was approximately \$27 million, of which almost \$22 million resulted from investments in the syndicated mortgages.

The securities commission and I differ only as to the reasonableness of the commission's determination not to pursue Argosy's syndicated mortgage activities and the commission's acceptance of the second debenture prospectus. My responses to these differences are straightforward. In both cases the

commission failed to investigate the activities of Argosy to determine the true facts. It failed to do so with respect to the syndicated mortgage interests because it erroneously concluded that they were not securities. It failed to do so with respect to the second series debenture, even though its staff members believed that Argosy was in a great deal of trouble. It even failed to investigate John David Carnie himself.

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Nevertheless, the minister, in a letter dated January 21, 1987, has refused to accept my compensation recommendation. His reasons for rejection are essentially three: (1) that he is responsible for protecting the funds contributed to the government by taxpayers; (2) that compensation in this case would lead investors to expect compensation in all cases of "financial failures and illegal acts" and (3) that he finds the Ombudsman's standard for government conduct unacceptable.

First is the argument that the minister and his agencies, in his words, are "stewards of the taxpayers' money." This argument cannot mean simply that compensation would cost too much. If it did, it would mean that Argosy is too large a governmental blunder. It would mean that government will pay for small mistakes but not large ones. What would it mean for the Ombudsman process? Should I screen incoming complaints and, if it appears that any support of the complaint may cost the governmental organization involved more than, let us say, \$100, should I send the complainant away because the complaint, if justified, would be too expensive to rectify?

If my role were to be limited to small complaints involving no more than one or two individual citizens, then the statute would prescribe that limitation. Ontario citizens would then not be entitled to expect assistance from the Ombudsman with respect to major government errors. This is not what the concept of Ombudsman implies.

In view of the money already spent on my investigation and on the minister's responses, it would be better to find a system of paying all complainants at the outset an amount equivalent to the cost of investigation regardless of the merits of their complaints.

Another aspect of the minister's stewardship argument is that compensation in this case would lead to compensation in all cases. Would the payment of compensation for the losses suffered by the complainants in this case mean there must be compensation for every government error? I do not think so. In this case the government's errors were unreasonable, as shown more fully in my report. In such circumstances, where such unreasonable decisions and omissions have occurred, the government must simply face up to its responsibility.

My recommendation is based on a series of unreasonable errors and omissions on the part of the government and its regulatory agencies. It is only in such circumstances that compensation should be granted and not necessarily in all cases. That is a judgement that must be made on a case-by-case basis, initially by me and then, if necessary, by the Legislature.

We should consider as well the effect of refusal to compensate. It would mean that maladministration carries no consequences.

On the other hand, a decision to compensate the Argosy investors will not mean that all future investors who suffer losses should receive similar

compensation. No such assumption was made by the Ontario government when it granted compensation to the Re-Mor investors several years ago on the basis of the recommendation of one of my predecessors. Nor was any similar premise accepted when the government of Canada provided full compensation of just under \$1 billion to depositors in the Canadian Commercial Bank and the Northland Bank or when full compensation was paid on the recommendation of the British Ombudsman to an investor who had lost 10,000 pounds in dealings with a broker whose licence had been permitted to continue despite indications of his dishonesty.

This brings me to the question of the Ombudsman's standards for government conduct. The minister and the chairman of the Ontario Securities Commission have argued that the standard applied in my report is not adequate to enable the commission staff to conduct their statutory functions without looking over their shoulders every time. I do not believe this is the case.

As this committee is well aware, the standards I have attempted to apply in my report are those enunciated in section 22 of the Ombudsman Act. This section authorizes me to make recommendations wherever I am of the opinion that:

"The decision, recommendation, act or omission which was the subject matter of the investigation,

"(a) appears to have been contrary to law;

"(b) was unreasonable, unjust, oppressive, or improperly discriminatory, or was in accordance with a rule of law or a provision of any act or a practice that is or may be unreasonable, unjust, oppressive, or improperly discriminatory;

"(c) was based wholly or partly on a mistake of law or fact; or

"(d) was wrong."

These are the standards that were applied to the governmental actions of the ministry. They are the standards which, my report concludes, were not met by the registrar of mortgage brokers and the Ontario Securities Commission between 1969 and 1980 in the course of their regulatory supervision of Argosy.

I do not believe I have imposed an unreasonably high standard of conduct on ministry officials in this case. In effect, those officials turned a blind eye to facts of which they were aware. They also failed to establish systems of communication to ensure that serious matters relevant to their statutory mandate were communicated between agencies and within agencies.

In conclusion, although some of the arguments you will face in the next few days will be extremely complex and at times legalistic, I sincerely hope that in the final result the committee will accept my conclusion that the government must at least share in the responsibility for the losses suffered by these complainants and my recommendation that compensation of 50 per cent, plus interest, should be paid to all arm's-length investors.

Thank you for your time. When the appropriate time comes, I will ask that my counsel and director of investigations and our team take you through the main points in the report and answer your questions.

Mr. Kerzner: I do not know whether the committee wants to get

started now and write the presentation over lunch or whether it wants to break early for lunch and get started a bit before two o'clock.

Mr. Chairman: What does the committee want to do?

Mr. Ashe: Normally, that would be fine, except that some of us did make commitments on the basis that 12:30 till two would be the lunch hour and have scheduled meetings accordingly. I appreciate and accept the timing problem, but, frankly, I cannot be here to start early. It is as simple as that. I do not know if anybody else has that problem, but I do.

Mr. Chairman: Then we had better continue with our hearings.

1210

Ms. Morrison: Good morning.

Interjections.

Mr. Chairman: Order.

Ms. Morrison: When I used to teach, I used to try to avoid this hour like the plague because most people's stomachs would rumble loudly enough for them not to hear what I had to say.

I am going to go through some of the facts. As you know, looking at the reports, the various documents you have been given, there are an enormous number of facts that we have turned over in this investigation and presented to you as concisely as we could in the report that you have before you. You will be relieved to hear I am not going to go through that report word by word or fact by fact. What I am going to do is go through a few of the points that we think are the very most important points. I will not, I think, be able to finish before 12:30.

What I will do is begin talking a little bit about the Ombudsman process, which is familiar to you but which is very important in this particular case. Perhaps when I finish talking about that, if it is about 12:30, we would break then, because the comments I have to make on the syndicated mortgages, which is the next thing I want to talk about, are fairly lengthy.

Let me begin by talking a little about a process you are very familiar with. We have been together before discussing Ombudsman reports and you are well aware of the nature of our investigative process. The Ombudsman's investigators look at both sides of an issue. They get the facts from the complainants, they get the facts from the ministry and it is not until the end of the Ombudsman process that we become the kind of advocates you see before you at this committee.

During the process we try to be very evenhanded and try to make sure we can get all the facts on both sides. Before we even begin an investigation, the Ombudsman must be satisfied that the subject matter of the complaint is one which personally affects the complainant; that is, there must be some connection--causal connection, if you like--between what the complainant is complaining about and the government organization's possible actions.

When we get to the end of our investigative process, you are well aware that we give an interim report to the ministry and then, if not satisfied with

the response, a final report. The nature of that report is very familiar to you, although you have a fatter one than usual on this occasion. It is not a technical, legal document. We try to explain, in terms that everyone can understand, the information we have obtained and the conclusions the Ombudsman has come to.

It has been the committee's job to review the Ombudsman's finding in relation to reasonableness. Mr. Philip said this morning it is not the job of this committee to second-guess the Ombudsman, to act as a court of appeal. They are nevertheless obliged to review the Ombudsman's findings in relation to reasonableness, not necessarily in relation to legality; that is, they look to see whether the Ombudsman's conclusions are ones that the ordinary, common person who is represented by people such as you in the Legislature, could agree with.

The committee has a great deal of experience in doing this. They do not set legal precedents with the decisions they make, but there is a certain convention to the way in which they look at the Ombudsman's report. They make recommendations which they feel are right in the circumstances and you will recall many of the complaints that we have discussed in which you have made recommendations to the Legislature and public statements in which you felt a heartfelt sympathy with the complainants, whatever the legalities of the cause.

Here we are talking about two governmental organizations. Essentially, we are talking about a ministry being responsible for the governmental organizations that operate under it. Because we have two governmental organizations and numerous complainants, it looks like a terribly complicated case. In fact, in many ways it is not complex. You have gone through Workers' Compensation Board complaints that, I feel, were probably more difficult in some ways than the issues in this case.

In the end, as committee members, you have to decide whether the standards the Ombudsman has applied to the ministry in this case are fair and reasonable, given the information before you. As I say, we have been through this exercise on many other occasions and I do not think we will have any difficulty knowing what is the task before us.

I will go on with the syndicated mortgages if--

Mr. Chairman: Continue to 12:30, please.

Ms. Morrison: In going through the facts in this report, I am going to oversimplify some things. I am sure I will be quickly corrected later on by ministry people. In some ways, I think it is necessary to oversimplify so that we do not lose track of what is going on throughout this process.

In our report, we have looked at two companies out of a vast network of companies that connected the various people who were involved here. There were many interconnected corporations, only two of which we have been really seriously involved with.

The essential nature of the transactions was that one of the companies we looked at got money from the public and the other company took that money and lent it out. That is the essential nature of the corporate organization and it does not matter very much about the sort of legal description of the relationship between the companies. The same people were involved in both companies and the same people were involved in a number of the companies to which the money was eventually lent.

Argosy's business was mortgages. It was registered as a mortgage broker by the registrar of mortgage brokers. A company cannot carry on a business as a mortgage broker without such registration. It was registered early in 1969. By the end of the very first year of registration, there had been enough complaints coming into the registrar for him to ask for an investigation. By the time the report on that investigation was received, the chief officer of Argosy, John David Carnie, had been convicted of theft by conversion.

In our report, we have not detailed Mr. Carnie's activities very carefully. You might be interested to know what "theft by conversion" means. In this case, Mr. Carnie had been involved in an insurance company. He had agents who were selling insurance policies for him, insurance policies with one of the big insurance companies.

One of his agents decided there was an easier way to make money than selling insurance policies. Essentially, he decided he would sell insurance policies but not tell the company about them. He got the premiums and the insurance company did not have to worry about putting them on the books. In fact, we do not have any evidence that this was Mr. Carnie's idea, but when he heard about the scheme from his agent, his response was, "I did not get my cut." He was eventually convicted of theft by conversion for the co-operation he showed in assisting his agent.

Mr. Philip: Did he eventually get a cut?

Ms. Morrison: Yes, he did, in fact.

The inspector's report, which came in after Mr. Carnie had already been convicted, showed some problems. If you look at page 18 of your report, you will see that he sets out a number of concerns he had about the operation of this company. He was not happy about the fee-sharing arrangements between this company and other companies. He felt that--a quote at the top of page 19, "...It was likely that in some cases there was overpayment of the borrower's 'previous accounts....'" Essentially, money was not going where it was supposed to have gone. There were false statements in the application and many of the transactions examined seemed to have little or no property equity left after the second mortgage had been put on the property.

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The inspector recommended that Argosy Investments Ltd. be required to explain these matters. There is a process in which Argosy could have been called to a hearing to explain what was going on. He felt this was necessary because of, as he said it, "AIL's complete and thorough disregard for the public interest." In the end, he recommended as well that the securities commission be informed of the findings regarding the Argosy company. He knew the securities commission might be interested. He knew that there were shareholders in this company and that the securities commission might have some interest in it. As far as we know, no action was taken on the inspector's report and we can find no information that tells us that the commission was, in fact, informed.

We will hear much argument in the next few days, I am sure, about the role of regulators in Argosy. What is it that the regulators are to do? The role of the registrar, so we may hear, is one to do with protection of borrowers on mortgages. The statute, however, speaks in wider terms. The statute speaks of proper business practices, integrity and acting in accordance with the law. In fact, it speaks to matters that would be in the interests of both investors and borrowers.

In any case, if the registrar found that Argosy's business practices were offensive enough to withdraw the registration, Argosy would not have been in the business of mortgage broking. This was Argosy's only business. In every prospectus you will look at, in every statement you see by Argosy of what it did, its statement will be, "We are registered mortgage brokers." It is this business that the registrar was there to regulate.

Between June 1970 and August 1971, Argosy operated without registration. It operated without registration although the registrar was well aware of what was going on. The registrar was in contact with Argosy and was trying to tell Argosy to get out of the business. The concerns that had been raised by the registrar were serious enough for him to withhold registration.

One of the concerns related to John David Carnie. You will notice on page 23 that the registrar felt very concerned about this person's involvement. At the bottom of the page it says, "...he was not prepared to continue Dawaca's registration"--this is one of the related companies--"since it was not in the public interest that Carnie be employed by a mortgage broker." He did not want Carnie anywhere near the mortgage broking business.

Note, however, that Argosy applied again on August 20, 1971, at the top of page 24, and John David Carnie got out of the act all right, but "...his father, John Carnie, Senior, was shown as being the vice-president and 'nonactive' as a mortgage broker." No question was raised about this. It continues, "A certificate of registration was issued on the same day; the registrar's personal 'Okay' on the application was noted three days later...."

That brings us to August 1971 and the re-registration. We now are properly registered and carrying on. Again, problems arise. It is re-registered in August, but by November 1971, which is a very short time later, the registrar is ready, again, to revoke the registration.

You will see on page 26 a statement that the registrar made in reply to submissions by Argosy saying, "Frankly, I think the public interest might be better served if both you and Argosy Investments Ltd. got out of the mortgage business by surrendering your registrations." Again, nothing happened. Although in the meantime, in November 1972, you will see on page 27 that, again, another problem has arisen. Here the chief inspector and the registrar are talking about "urgent concern." The matters of Argosy that they are viewing are of "urgent concern" to them. This is November 1972.

It is not until August 1973 that we finally have a revocation of the registration. At that point, the registrar finally says, "I am revoking the registration" and Argosy at that point has an opportunity for a hearing before the Commercial Registration Appeal Tribunal to argue about the revocation of the registration.

The tribunal hearing was held in December 1973, and after hearing the circumstances of Argosy and after hearing the various arguments it made for the way it carried on business, it was given a probationary registration. You will see on page 30 some of the conditions of that registration. Note particularly the second condition: "...John David Carnie shall forthwith surrender and give up his share or shares in the corporate stock of Argosy Investments Ltd...The breaching of said terms and conditions shall immediately result in the revocation of said registration at the time of said breach."

There were a number of other conditions but the net result was that Argosy was in business again.

Ten days after the hearing--they had had a chance to get going already--complaints began to come in again.

Mr. Philip: May I ask a question? I am not quite sure as to the connection of Carnie's father as a director and how that would in any way be covered under item 2 on page 30?

Ms. Morrison: It would not.

Mr. Philip: In other words, they said, "You John David Carnie may not participate in the business, but we are going to look the other way, the fact that your father is a director of that company."

Ms. Morrison: That is correct.

Mr. Philip: Being a director did not mean that he had equity in the company. It simply would be that he would be a paper figure, would it not?

Ms. Morrison: Who, the father or John David?

Mr. Philip: The father.

Ms. Morrison: We do not know what particular shares might have been held by him in this particular circumstance. We do know, however, that another company that you will see mentioned in various places in here called Wilcar was 50 per cent owned by John David Carnie and it is Wilcar that is doing many of the dealings with Argosy Investments in this case.

Mr. Philip: So at no time in your understanding, in coming down with recommendation 2 and in issuing the provisional authorization--

Ms. Morrison: Probation.

Mr. Philip: --did they deal with either the equity that Carnie might have in the company through his father--

Ms. Morrison: Carnie senior.

Mr. Philip: --Carnie senior or what role Carnie senior was playing in that company?

Ms. Morrison: My understanding from Paula is that Carnie senior owned shares in both Argosy and Wilcar. Is that right?

Mr. Kerzner: You are making reference to two different companies. He held shares in Argosy Investments in trust for Argosy Financial, the parent, and then held shares in the parent through a corporation that held shares in the parent.

Ms. Morrison: He had indirect shareholding.

Mr. Philip: AFCL was the parent. He owned shares in that and he also owned shares in AIL which is the child, if you want.

Ms. Morrison: John David Carnie?

Mr. Philip: Carnie senior.

Ms. Morrison: Carnie senior was named. We have not looked into Carnie senior's involvement in all this. We know that he was named as an officer at a time when John David Carnie was not going to be allowed to be involved.

Mr. Kerzner: I think, Mr. Philip, when we give you the excerpts from the registrar of mortgages' documents that should be ready tomorrow morning, You will see that information on some of the annual returns. Just before we break for lunch, I take it your point on this is that the registrar either was gullible enough to be taken in by the sudden appearance of Carnie senior shortly after Carnie junior is declared persona non grata, or he was not so gullible and notwithstanding that he might have appreciated the significance, did nothing about it. It is one or the other. Is that the point you make?

Ms. Morrison: Certainly he should not be under any misapprehension that the Carnie family had just taken a bow and gone. I think that all we are drawing your attention to is that it is not clear that John David Carnie ever did what he was told by any of these regulatory agencies.

Mr. Philip: That was the point I was trying to question you on; that is the point I was making.

Mr. Chairman: This might be a good time to break for lunch.

The committee recessed at 12:30 p.m.

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STANDING COMMITTEE ON THE OMBUDSMAN
ARGOSY FINANCIAL GROUP OF CANADA LTD.
MONDAY, APRIL 13, 1987
Afternoon Sitting

STANDING COMMITTEE ON THE OMBUDSMAN

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Substitutions:

Ashe, G. L. (Durham West PC) for Mr. Sheppard
Offer, S. (Mississauga North L) for Mr. Bossy

Clerk: Decker, T.

Staff:

Kerzner, T., Legal Counsel; with Perry, Farley and Onyschuk
Evans, C. A., Research Officer, Legislative Research Service

Witnesses:

From the Office of the Ombudsman:

Morrison, G., Director, Investigations
Boothby, P., Assistant Director, Investigations
Anisman, Dr. P., Legal Counsel; with Goodman and Carr

From the Ministry of Financial Institutions:

Moore, D. C., Legal Counsel; with Lockwood, Bellmore and Moore

LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON THE OMBUDSMAN

Monday, April 13, 1987

The committee resumed at 2:05 p.m. in room 151.

ARGOSY FINANCIAL GROUP OF CANADA LTD.
(continued)

Mr. Chairman: We will resume the hearings. You may continue, please.

Ms. Morrison: When we broke for lunch I was asked by one of the members to make some brief explanations of some of the terms we are using. We bandy about the term "mortgage" quite a bit, and he was asking whether we would clarify the terms "blanket mortgage," "umbrella mortgage," "wraparound mortgage" and "syndicated mortgage."

I am not going to give you long-winded, legal definitions of these things, but I will explain to you the two essential types of mortgages we are talking about. The term "wraparound," "blanket" or "umbrella mortgage," in all except the finest of details, refers to a particular kind of transaction. One of those kinds of transactions is explained to you in some detail on page 9 of our report. This was one of Argosy's particular kinds of blanket mortgages.

Essentially, a blanket mortgage is one which gives a person who already has a mortgage some more money and puts a new obligation on that person to pay more to the person lending him the money. In a lot of these cases, for example, people wanted to buy a car or put aluminium siding on their houses or one of those kinds of things. They had an existing house mortgage, and they went to Argosy and said they would like to borrow some money. Argosy said, "Fine," gave them some cash and said: "Instead of your regular monthly mortgage payment, pay this higher amount to us. We will use some of that higher amount to pay your first mortgage for you."

Argosy did not take over legal liability for that first mortgage. It said it would make the payments. Sometimes it did and sometimes it did not. That is another question. Essentially, what it did was say to people: "You will give us a certain higher payment than you used to pay. We will pay your mortgage and we will give you some cash to go out and buy your car or put aluminum siding on your house."

The trouble with that transaction for a lot consumers is that it is very difficult to calculate the rate they are paying. What you are trying to do is figure out whether you can afford the higher payment. If you take the higher payment and the various fees for the transaction it is on, it can be quite an exorbitant amount of money.

One that is described on page 9 gives you some kind of example of this; in this instance, \$18,000 at 14 per cent. That loan intended to cover, blanket, wraparound, umbrella or whatever you want to call it, an existing first mortgage of \$12,000 at seven per cent. You can see the increase in interest rates we are talking about.

The borrower gets the \$6,000 difference so he can go and buy his car or put aluminum siding on his house. Argosy Investments Ltd. agrees to make the

payments on the first mortgage. It makes it very clear in its prospectus that it is not taking over the first mortgage. It is not liable on the first mortgage.

In the end, the person has an \$18,000 debt at 14 per cent instead of a \$12,000 debt at seven per cent and the \$6,000 difference. However, he has also paid another \$1,600 in fees in the transaction. As I say, this is a transaction where Argosy is lending money.

The other kind of mortgage which we talk about a lot is a different idea altogether. The syndicated mortgage was a situation in which Argosy was getting money from the public in order to lend it out again. Investors essentially gave Argosy money for it to invest in what were called syndicated mortgages. As you will see later on, these mortgages were often mortgages with a developer, bridge financing or various kinds of development financing, a lot of it very high risk.

Mr. Philip: So they were not secured mortgages.

Ms. Morrison: They were secured to some extent. The question was what kind of security was there. The way Argosy explained to the people investing their money was something like this: "You give us your money. We are going to put in some of our money, and we are going to go together on this investment. Our money will be the first money paid out if there is a problem, so we are going to subordinate"--as they called it--"our interests to the interest of the investor."

In the end this whole thing collapsed. It hardly mattered whose interest was subordinated to whom. In any case, these syndicated mortgages should not be confused with the mortgage business we were talking about here, the blanket mortgages. Argosy in the blanket mortgage situation is lending money to people like you and me who need some extra cash.

That was for Mr. Shymko, who did not turn up.

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Mr. Philip: May I just ask one question on this because I think it is important. The investors thought that they were investing in secured mortgages, in something that they, in fact, could grab title to or put a lien against if something went wrong. You are saying that only in certain instances in the syndicated mortgages was there something that could be foreclosed on, and that it was more in the way of a speculation or an investment in a particular developer or an idea. Is that what we are talking about?

Dr. Anisman: The investors, depending on which investors and at what time, believed that they were giving Argosy money which would be invested in mortgages and that the mortgages presumably were secured. Argosy did not always tell them what security it was and in some of the cases the mortgages, according to one of the reports I have read, were as low down as fifth or sixth in line. The investors themselves could never claim against the property; only Argosy could claim against the property on a foreclosure or any other enforcement activity. The individual investors did not have the right to do that. In effect, what they were doing was giving Argosy the money to invest in mortgages and Argosy did the selection and the other elements of the enforcement.

Mr. Philip: To try to get a handle on it, would it be as much of a

speculation as money invested in an option on property?

Dr. Anisman: I cannot compare whether it would be as much of a speculation in it as in an option on property. The degree of risk involved in the particular mortgage would depend on factors like the value of the property as opposed to the amount of money owing on the mortgage and Argosy's number in line, the degree of subordination to it. In some cases, I understand that they put up more money than the value of the property was supposed to be, which would make those mortgages very high risk. I would say that an enforceable option to purchase a particular piece of property would be less risk than some of these mortgages appear to me to have been.

Mr. Offer: On the blanket mortgages you indicated that the initial mortgage was eight per cent and then in the wraparound situation it went up to 14 per cent after the secondary advance of principal.

Ms. Morrison: It was seven to 14 per cent in this particular case.

Mr. Offer: Can you tell me the time period? For instance, what was the current market rate when the wraparound took place? Was 14 per cent something which was in line at the particular time, given the fact you are basically talking about a second or a partial second mortgage?

Ms. Morrison: This particular example does not have a time frame on it.

Mr. Offer: Do you have the years, though, so that we can get a handle on it?

Ms. Morrison: We are talking from 1969 onward. These blanket mortgages were part of Argosy's business from the very beginning.

Mr. Offer: The reason that I am asking the question is that I would like to get an idea--I have no question about the eight per cent because it was probably a market rate type of mortgage. When they commenced the blanket mortgage, it might have been two, three, four or five years down the line.

Ms. Morrison: When the interest rates were higher?

Mr. Offer: Number one, when interest were higher, and, second, we were talking about moneys that were not first mortgage moneys. We were talking second mortgage moneys. I would like to get the market sense of it all, if you have that there; I would expect that you would, actually.

Dr. Anisman: The point of a blanket mortgage is to consolidate all the borrower's payments into one mortgage, so the borrower can then make a single payment. Presumably, the new mortgagee will handle and become responsible for all the payments on the earlier mortgages. That should happen at some market level that is between the existing mortgage and the new mortgage.

What Argosy was apparently doing was this: it would take--and this is the example in the report--an existing mortgage at seven per cent and give a blanket mortgage, which would mean it would give, say, an additional \$6,000. There would then be a total of \$18,000 owing. Argosy would assume responsibility for the payment of the first mortgage, the \$12,000 mortgage, and would receive payments on the other \$6,000. What it did in giving the blanket mortgage, though, was to charge a rate double the earlier percentage,

14 per cent, on the full \$18,000, which means the investor would lose the benefit of the initial mortgage of \$12,000 at seven per cent and be paying, in effect, an additional seven per cent on that initial mortgage to Argosy.

As I understand it, the registrar's misgivings about that practice were that he concluded it was simply unfair to borrowers to induce them into that type of blanket mortgage when it resulted in their having to pay an increased cost without Argosy legally assuming any liability. It would have been just as simple for Argosy, if it were operating in a transaction that would be totally to the benefit of the investor at market rates, to give the second mortgage for the additional \$6,000 at the 14 per cent and not take in the blanket. I think that was the problem.

Mr. Offer: I thank you for that. I am well aware of the creation and the structure. I was just wondering whether you had an idea as to the time limits.

Ms. Morrison: I can give you a sense of date. Paula has just provided me with some statements of these mortgages. One was a transaction in 1970. The person had an existing mortgage of approximately \$5,760, which had a maturity date of 1972. Suppose it was a five-year mortgage or something and was taken out in 1967. That existing mortgage was at seven per cent. The end result of the blanket mortgage transaction was an effective rate of interest of 26.08 per cent. That was a transaction dated July 7, 1970.

Mr. Offer: What was the add-on?

Ms. Morrison: The end result was a blanket mortgage of \$10,900--these are the figures at the bottom of the balance sheet, which are fairly complicated--a first mortgage of \$5,760, an advance of \$5,140, total charges of \$1,000, net to borrower \$4,140, effective rate of interest 26.08 per cent. I can give you those figures if you want to look at them later.

Mr. Philip: May I ask a question? It puzzles me somewhat. Why would anyone want to do that, rather than simply taking the property, if it had only \$5,000 worth of mortgage on it, going to a bank and saying, "I want a demand loan," which is the equivalent of a second mortgage, I suppose--the bank can put a lien on the property temporarily, if it wishes--and borrow with interest on only the amount that is being borrowed?

Is there any obligation under the mortgage imposed by the registrar of mortgage brokers that would demand that a mortgage lender at least disclose the options that are open to the purchaser?

Ms. Morrison: Send them to the bank, for example?

Mr. Philip: Or simply say, "Other mortgage brokers can put a second mortgage on your property for considerably less."

Ms. Morrison: No.

Mr. Philip: There is no code of ethics or anything that demands that kind of disclosure.

Ms. Morrison: No, there is no obligation. The registrar of mortgage brokers has the power to refuse registration to someone he feels will not carry on business with integrity, honesty and in accordance with the law. A number of the concerns that are raised here by the registrar of mortgage

brokers appear, at least to us, to come within that overall public concern, but there is not, as you say, any obligation on Argosy to send them down the street to, for example, the Royal Bank.

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Mr. Offer: I know the concern that you raise. Why would you not just go elsewhere for that type of funding?

Mr. Philip: My concern is if I had that kind of equity, I would ask for a demand loan rather than a mortgage.

Mr. Offer: You have indicated an effective rate of interest of 26.08 per cent, as I recall.

Ms. Morrison: That was on that particular transaction.

Mr. Offer: I am talking about that particular transaction. What was the actual interest rate on the blanket mortgage? Because I would think the effective rate would also be calculated on the basis of moneys being paid back through mortgage payments which were not received, really taking maybe \$1,000 of the \$5,000 for administrative or other costs.

Ms. Morrison: I can give you some fees if you like.

Mr. Offer: No, I am not concerned about the fees.

Ms. Morrison: The interest rate was quoted at 16 per cent.

Mr. Offer: In what year?

Ms. Morrison: In 1970.

Mr. Ashe: Again, I am not too sure why anybody during that time frame would borrow money at even 16 per cent, let alone 26 per cent, but that is not the issue right at the moment. Was there any obligation on the broker under the legislation that was then in effect to spell out all these various gross charges, net charges, effective rate of interest, etc.?

Ms. Morrison: No, not what an effective rate was. You should remember that the borrowers we are talking about here are very poor borrowers. They are put into this situation essentially because they want more money than a regular bank or other institution is able to give them.

Mr. Ashe: I presume it was normally the source of last resort?

Ms. Morrison: That is right.

Mr. Ashe: I think that is pretty obvious. As Mr. Philip alluded to, I do not know why anybody would borrow under those circumstances, so it has to be a last resort.

Ms. Morrison: Unless you cannot get money anywhere else.

Mr. Philip: If you have only got \$5,000 left on a mortgage, I cannot imagine how you could be at the last resort.

Ms. Morrison: Do not forget, this is back in 1970. A mortgage of

\$5,000 then might have been quite different than \$5,000 on a mortgage now.

Mr. Philip: Even in 1970, a house in Toronto would go for at least \$35,000, \$40,000, \$50,000.

Mr. Ashe: Not on average. Anyway, that is neither here nor there. It was sure a lot more than \$5,000, there is no doubt about that. But that really is not the issue.

So there is no obligation to show the actual cost of doing business, if you will, to that degree. Was there anything in it that indicated how the blanket mortgage worked in the sense of, did people know they were going to pay that rate of interest on the whole blanket?

Ms. Morrison: There was an obligation to give a statement of mortgage which had to show what fees were charged. To a relatively unsophisticated borrower, that does not necessarily bring home the significance of paying the new rate of interest on the whole amount of money, for example.

Mr. Ashe: You can only go so far in your sympathy on that one, frankly.

Do you have any relationship between the amount of the problem that was created through this mortgage and the amount of the problem that was created through the syndicated mortgage? I have been reading again some of the material that led to the investment that people thought they were putting into syndicated mortgages. There is no doubt this talks about the subordinate position that you spoke about, the 85 per cent, and then of course the allowance for mechanics' liens opportunities and only 80 per cent of market value at any given time for advances and what have you. How do the two problems relate? Again, what kind of protection was indicated at the time of the borrowing and, in turn, when they advanced it out?

Mis. Morrison: These particular collateral, as we call them, or blanket mortgages, with the rates of interest of which we are talking about, were the business of Argosy up until about 1975 to a great extent. That kind of mortgage, these collateral mortgages, wraparound mortgages, blanket mortgages, whatever you call them, were their business. It was not until later on in Argosy's business that it got heavily into these so-called syndicated mortgages.

In some ways, we see the history of the regulation of the registrar of mortgage brokers in that up until about 1975-76 we see a lot of complaints and a lot of kind of concern by the registrar, and the various revocations and so on. After about 1975 or 1976, we do not hear that much any more about complaints and so on. Part of the reason that happens is that instead of putting their money into these little people's mortgages, they are putting it into syndicated mortgages and lots of the syndicated mortgages are to related parties--Carnie's wife, family, etc.--so you do not expect complaints to the registrar of mortgage brokers about the mortgages. They are now lending them to developers, developers including themselves. After that, we do not see the same kind of complaint rate, so this earlier business with the kind of collateral--

Mr. Ashe: Okay, so we got into the big money--

Ms. Morrison: Later on.

Mr. Ashe: --when we got into the syndicated mortgages.

Ms. Morrison: That is right.

Mr. Ashe: In the legitimate syndicated mortgages--that is to say, where there were arm's-length transactions--am I safe to assume that the return on those worked out to be reasonable in the majority of cases? I do not mean rate of return, but they got their money back. In most cases, these were just interim mortgages during construction and when the final mortgage was placed upon completion, I presume that is when the mortgage would be repaid. Was there an experience established there that these were generally pretty good? Was it the non-arm's-length ones that were probably never legitimate to start with?

Dr. Anisman: I have not gone through every syndicated mortgage that Argosy ever gave.

Mr. Ashe: I appreciate that.

Dr. Anisman: I have gone through a list in one study which involves an analysis of about 23 mortgages, some of which were said to be related, some of which were said to be not related. Virtually all of them were high risks and were outstanding at the time of the bankruptcy. Virtually all of them involved some other kind of relation apart from what the accountants technically called a related company transaction. So Argosy was in some way on both sides of most of those transactions in any event, in that it got a benefit out even in what was called an arm's-length transaction and virtually all of the ones that--I guess it is by definition--were existing in 1980, related and unrelated, were unpaid.

Mr. Ashe: I find it hard, seeing the principle again behind the legitimate syndicated mortgage, how they could go bad, unless they were financing the construction--let us use a round number--of a \$1-million building and they were advancing \$1.5 million when the thing was going to be worth only \$1 million when it was finished.

Dr. Anisman: They did some of that.

Mr. Ashe: Other than that, supposedly with the protection of the 15 per cent, the 80 per cent of market value you are advancing only as construction progressed, it is hard to understand how you would get behind.

Ms. Morrison: Some of it did relate to the value of the land in question. A number of the projects we looked at had evaluations done of what the land would be worth if it got all the planning approvals and all the zoning approvals and all the development in it.

Mr. Ashe: Highest and best use. That is a normal evaluation process.

Dr. Anisman: What we could find, though, is that Argosy was advancing money at times when these building enterprises did not have the rezoning permits and were not building, and frequently advanced amounts beyond the amount of its own commitments, so that even in the so-called arm's-length transactions, it was feeding in bad money.

As I say, in most of the so-called arm's-length transactions I have seen reports on, Carnie was getting a benefit out of the other side. There are examples where mortgages are treated as to unrelated parties where the

principal paid out by Argosy was used by the mortgagor, the borrower, to pay off another mortgage which was held by a Carnie enterprise. Those are treated as arm's-length mortgages, but I guess I view them as having some kind of related element. On my calculation, over 90 per cent of the monetary value in 1980 was involved in mortgages that were related in the two senses I have just described.

Mr. Ashe: Okay. We had the reference this morning about the amount, now that the receivership was in effect finished and all of the assets that will be realized are realized. Any idea of numbers in that, in a very specific sense, what the kind of payout will be?

Ms. Morrison: From the receiver?

Mr. Ashe: Yes.

Ms. Morrison: We do not know that, but we understand it to be very small. The receiver is just making his report right at this present time. The last day for receiving information was March 31, I believe, so the report is not prepared yet. We tried to get that information but we could not get it.

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Mr. Ashe: Does it look like there will be anything available for the average investor? Are there any prior claims that will eat up anything that might be there?

Ms. Morrison: I guess the receiver's fees will eat up some of it.

Mr. Ashe: They always win; they are like the lawyers.

Ms. Morrison: We do not have good information about that.

Dr. Anisman: The submissions of the draft letters to the court--we do not have the figures--in the last application by the receiver classify the investors into three classes, one of which would receive partial payment and two of which would receive none, although I am not sure about the third. I will check.

Mr. Ashe: Mr. Chairman, I think our knowledge of that is very relevant before the final deliberations of this committee, appreciating that if it is impossible, we will have to consider that too.

Mr. Kerzner: I understand that (inaudible) made some inquiries. When we come to their case, I think they will be able to give us the figures.

Mr. Ashe: Okay; that is fine.

Mr. Moore: I can just indicate that among the materials we talked about this morning there is the latest court order, as I understand, that speaks of the three categories to which Dr. Anisman has referred. I will just leave you the reference taken from the court file; it is tab C-5. It is an order of the Supreme Court of Ontario which sets March 31 of this year as a date for proofs of claim to be filed, and there are draft letters appended.

The information that we were able to ascertain on Friday--and we are following up on this as we are here today--is that there is about \$2.5 million for distribution in respect of claims that are to be filed. Those claims have

not yet been collated and we do not have the exact number, but we hope to have that before the completion of these proceedings.

Dr. Anisman: I believe those are all syndicated mortgage claims.

Mr. Moore: We were not able to get confirmation on that, but I expect that these would be payments in respect of the syndicated mortgages on certain projects where the receiver was able to sell the property in Ontario and out west and was able to realize some amount of money in excess of the encumbrances on the properties. There will be some moneys payable to certain of the syndicated mortgage holders.

Mr. Offer: Thank you very much. I have just a couple of questions based on some of the concerns raised by Mr. Ashe. Is the statement of mortgage an obligation under the Mortgage Brokers Act; the completion of that statement of mortgage?

Ms. Morrison: Yes.

Mr. Offer: Can you indicate some of the types of information found on a conventional statement of mortgage?

Ms. Morrison: I can get that for you, if you like.

Mr. Offer: In this matter, were statements of mortgages always filled out, as far as you are aware?

Ms. Morrison: As far as we are aware.

Mr. Offer: They were always filled out. That would be an obligation under the Mortgages Act, to make certain that the statement of mortgage was filled out and, of course, properly.

Ms. Morrison: Yes.

Mr. Offer: As far as you are aware, that was always done.

Ms. Boothby: In the 1969 investigation that was conducted by the registrar's staff, one of his concerns was that there was a false statement in the statement of mortgage for one of the loans. However, I do not believe we saw anything else on the registrar's files that indicated that statements of mortgage were not being issued.

Mr. Offer: Okay. I just wanted to make certain that those were being completed properly, as best as you can ascertain. With respect to the syndicated mortgage, is there an agreement among the people who are parts of the syndication, such as a syndication agreement?

Ms. Morrison: There is an agreement between the people and Argosy, and Argosy is one of the holders of the interest in the syndicated mortgage. There is not, as I understand it, an agreement among all the other people. It is just an agreement between you as investor and Argosy as another investor in the syndicated mortgage. Is that correct?

Dr. Anisman: It would depend on the time. In the initial mortgages, I think there was a trust agreement whereby the moneys invested by investors were held in trust to be allocated by Argosy for mortgages. At a later date, there was an agreement with Argosy and I do not think there was the same trust relationship. I will check those agreements, though.

Mr. Offer: Thank you. I asked the question because I am wondering whether you can tell us from your knowledge whether, in these agreements, whatever they were, syndication agreements or trust agreements, Argosy was to be the mortgagee. Was that the term?

Dr. Anisman: Yes, it was.

Mr. Offer: You mentioned earlier that the participants to the syndication were not named as mortgagees.

Ms. Morrison: That is correct.

Mr. Offer: But in the agreement, which I assume they signed, it is indicated that Argosy would be the named mortgagee.

Ms. Morrison: That is right.

Mr. Offer: As far as you know, all these syndicated mortgages were, in fact, registered against some land.

Interjection.

Mr. Offer: That is fine. I just wanted some clarification on that. Thank you.

Mr. Chairman: Continue, please.

Ms. Morrison: In the questions and the first statement I made, I have pretty much gone over the involvement of the registrar of mortgage brokers. I just want to emphasize a couple of things.

One is that the registrar did have some power to investigate these matters. There was a probationary registration. To most of us, "probationary" means the person has it if he behaves himself. There was no follow-up of the probationary registration. It was not because the registrar never followed things up, because sometimes he did so. He had the power to inspect and to find out about these things. There were complaints brought to his attention, so it was not that there were not some triggers to bring it back to his attention.

It is absolutely clear that the conditions of the probationary mortgage were not followed. For example, you will find later on in the report--and I will get to this when I am talking about some other things--that at a hearing before the Ontario Securities Commission quite a bit later on, which is talked about at page 53 of your report, Carnie was questioned about his involvement in the mortgage business.

He essentially bragged that at all times in the business he was the person who had the power to look after the mortgage moneys. He said, "I am the only employee that had total access at all times." In the whole business from 1969 on, he himself said to the securities commission when asked about it, "Yes, I was carrying on this business throughout."

There is very little doubt that the terms of probation were not adhered to, but we do not have any check on that. In the end, Argosy just carried on doing its business with some interruption by the registrar--that is, questioning at the Commercial Registration Appeal Tribunal hearing, etc.--but got its registration back, probationary as it was, and there was no further check to see whether the conditions of the probation were met.

As I say, after 1975 or 1976, we begin to see fewer complaints to the registrar of mortgage brokers because at that time the mortgage business became much more heavily syndicated and much less the kind of business which might generate the kinds of complaints we have seen to date.

Mr. Philip: May I ask a question? In 1975 there was a court decision in which he admitted he was still acting as a mortgage broker. Then you are saying he gave evidence before the securities commission that he was a major owner or participant in Argosy International Ltd.

Ms. Morrison: The commission hearing was not until 1978.

Mr. Philip: Right.

Ms. Morrison: That is the commission hearing in relation to registration as a securities issuer. At that time, the commission asked a lot about Carnie's involvement in various types of business. He was examined about his criminal record and all kinds of things. He was asked at that time what role he had played in the 11 years of Argosy's existence.

"Carnie replied, 'I have been the general manager from start to finish.'

"The next question from staff counsel was: 'Have you at all times had access to the moneys coming in by way of mortgage investment and moneys going out in mortgage investment?'

"Carnie answered: 'I am the only employee that had total access at all times.'"

Mr. Kerzner: I think, though, Mr. Philip is asking about a notice that appeared in the registrar's file in December 1975, in which the registrar had notice of a court judgement against, among other people, Wilcar, Argosy and John David Carnie, among other people, for some \$15,000 for work done as a mortgage broker.

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Ms. Morrison: Can you draw my attention to that in the report?

Mr. Philip: Basically, what I am getting at is, is it not your understanding that at the time the Ontario Securities Commission had its hearing it would have had evidence that in 1975 a court hearing showed he was acting contrary to what he was instructed to do; namely, acting as a mortgage broker?

Ms. Morrison: With Wilcar. Is that--

Mr. Philip: No.

Ms. Morrison: I am sorry, I am not--

Mr. Kerzner: I think the problem is that the registrar expressed the view that Carnie ought not to be associated in the mortgage business or as a mortgage broker, which is something you directed our attention to earlier.

Ms. Morrison: That is right.

Mr. Kerzner: In December 1975, there appears a notice of a default

judgement against, among other people, John David Carnie, Argosy and Wilcar, in which the claim was based on work done by those people as mortgage brokers, and I think Mr. Philip is alluding to the fact the securities commission might have found it useful--

Ms. Morrison: To know that.

Mr. Kerzner: --to know what the registrar knew and what the registrar had been saying with Carnie.

Ms. Morrison: Exactly. In fact, in May 1974, which is fairly shortly after the Commercial Registration Appeal Tribunal hearing in December 1973, it is clear that Wilcar Investments was brought to the registrar's attention, and he knows Wilcar was owned by Williamson and Carnie. You will see on page 33 of our report that there was a refund eventually ordered on a mortgage transaction related to Wilcar, and the registrar noted and learned from an affidavit in that case that a brokerage fee had been paid by Wilcar, and that is John David Carnie in another incarnation.

Mr. Philip: What I am trying to get at, though, is, what knowledge would the securities commission have in 1978 of the 1975 problem of him operating as a mortgage broker, contrary to the instructions?

Ms. Morrison: One of the things I think we have pointed out throughout our report, and I will come to it a bit later, is that at very many stages of the securities commission's dealing with Argosy and with Carnie there was the opportunity to get this information from the registrar, which was not taken up. They maybe did not know, but they could have known.

Mr. Philip: Surely, though, when the securities commission is doing a hearing, it is its responsibility to find any kind of court decisions, court cases involving the principal. What I am wondering is why they would ignore what in fact was admitted to in 1975.

Ms. Morrison: I think that is a very good question. We know, for example, that on the Ontario Securities Commission files there was a clipping about this earlier 1973 tribunal decision.

Mr. Philip: So they obviously knew about it.

Ms. Morrison: They had the clipping on their files.

Dr. Anisman: I think we may be talking about two different items. The clipping on the files related to the CRAT hearing in 1973. I do not think we found any indication the Ontario Securities Commission was aware of the default judgement in 1975 that you have just mentioned.

Mr. Philip: That is what I was asking. But they should have known if they were doing an adequate preparation for a hearing. Is that your contention?

Dr. Anisman: It is something they might have found. In fairness to the commission, I do not think it would normally check civil judgements when looking for the character of parties before it. They would check criminal files, I would expect, but not civil files.

Mr. Ashe: In that regard, it seems to me that in all the bulk of material I have read, particularly in the last few days, when that reference came up to 1975--there is some reference to the registrar checking back--and

the date of incident, if you will, that prompted the complaint predated the conditions that were put on by the registrar upon renewal--in other words, that interim renewal.

I think the point they were making, if I am recalling the correct thing, was that it was not relevant to that particular argument. I am not saying it was not important in the total context, but in the context of contravening the conditions of renewal it was not relevant, because it had been entered into prior to the conditions being placed.

Mr. Kerzner: I think the significance, though, of the 1975 newspaper clipping is that it would seem to indicate, notwithstanding, that from 1971 on, and even 1973 on, Carnie continued to operate in association with Argosy, which (a) is something the registrar did not want to happen and (b) when he gets this clipping, he makes no inquiry and follow-up to find out whether in fact Carnie is carrying on contrary to his wishes.

Ms. Morrison: I am going to leave the registrar for now and go on to the Ontario Securities Commission. Before I say too much about the securities commission, I should point out that there are a number of points on which the ministry has agreed with our report relating to the securities commission.

As you know, we received masses of documentation in response to our interim report. One of the bits of documentation which you have in your binder is a report by Mr. Stransman. Mr. Stransman's report and various communications from Mr. Beck and the minister lead us to believe that we have no quarrel about one of the debenture series and the registered retirement savings plans. The fact that there were unreasonable activities in relation to those was not quarrelled with.

The main issue that we have with the OSC relates to the syndicated mortgages. We have already talked about what the syndicated mortgages are in kind of factual terms, but there is a great problem with syndicated mortgages in legal terms. You will have read in our report that the securities commission decided that the syndicated mortgages were not securities within the meaning of the act and therefore not subject to its regulation.

We have two things to say about that. The first thing we have to say about it is that it was wrong, and the second thing we have to say about it is that it was unreasonable.

It was wrong. We obtained a legal opinion about it which suggests that they were in fact securities. The ministry's own legal opinion, Mr. Stransman's opinion, also suggests they can be characterized as securities.

But more than being wrong, we say it was also an unreasonable decision. Part of the reason it was unreasonable was that there was not sufficient information upon which to make the decision. We agree that the legal question of whether these transactions are in fact securities within the meaning of the act is a very complex question, but in order to make the decision about whether they are securities, you have to have a certain amount of information. It is our belief that there was not enough information sought in order to make a reasonable determination of that.

This committee has seen cases like this before where the Ombudsman feels that the governmental organization has made a wrong decision because it did not get enough information. Part of the Ombudsman's function is to ensure that government decisions are based upon relevant information and based upon

sufficient information. In this case, there were very important consequences to the decision. Had the securities commission felt that these transactions were securities, they would have been subject to regulation by the securities commission. The kind of regulation that the securities commission does includes disclosure of the kind of risk involved; and as Dr. Anisman stated a few minutes ago, most of these syndicated mortgages were very high-risk arrangements.

The practices of the issuer would have been subject to some review. As it was, the securities commission had several cracks at this question. On at least five occasions it was brought to the attention of the securities commission. In the very first review of the matter it decided they were not securities--without the benefit of a formal legal opinion--and then relied upon that decision for the whole rest of the time.

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The events are outlined in the report. I will not go through them in great detail but I will just point out to you in the very first instance--in August 1975, for example, an investigator at the commission said to Argosy, "Stop doing what you are doing until the commission can have a look at what it is you are doing." At that time the question was reviewed, but it was not reviewed thoroughly enough, in the Ombudsman's opinion. There was no formal legal opinion, and although there were very good securities lawyers involved--we have no quarrel with the expertise of the people--the best securities lawyer in the world cannot characterize a securities transaction without the information upon which he needs to make his decision.

Later in the transactions, an investor sent all of his documents to the securities commission, everything he had received. Again the securities commission, in its review, did not feel that this was a transaction which it needed to oversee. Later yet, the securities commission staff followed up a couple of ads in the Globe and Mail. These ads were advertising interest in syndicated mortgages and in following them up, the staff in the securities commission essentially called up the salesman and asked him whether these were shady deals. As far as we can tell, they did not have any further information than the information they got from the salesman, but we noticed that on one of the memos recording this follow-up, the staff had written "Argosy again." By this time Argosy had become a familiar name at the commission and there is no doubt that a number of the commission's staff had concerns.

The decision about the syndicated mortgages question was a very important one because the syndicated mortgages, as you know, were a very large part of the Argosy loss. We are talking in the order of \$20 million, and as far as we can tell, most of these transactions, as we have looked into them, were non-arm's-length transactions. The commission did not regulate these transactions in any way. It is our view that they might have had a different view had they carried out further investigation or had they contacted the registrar.

Mr. Ashe: It may not be relevant exactly at this time, and I do not know whether you are going to come to it, but it just came to my mind to ask the question anyway. Is there much indication on the records that Argosy was meeting its obligations of returning investments as they came due, if the investor did not want to reinvest, keeping in mind most of these syndicated mortgages particularly were relatively short-term, and I know part of their material was, "When they come due, you will have a chance to reinvest if you wish"? Is there any indication in the files that if people said, "No, I want my money back; it has now matured," it was not being returned?

Ms. Morrison: There was one complaint which related to a person's money having been put back into another term of syndicated mortgages when he did not want that to occur. Do you remember that?

Ms. Boothby: Yes.

Ms. Morrison: We do not have a lot of information about it, but I do recall there was one complaint in which that was the subject matter of the complaint.

Mr. Ashe: But only one.

Ms. Morrison: That was a formal complaint to the regulators.

Mr. Ashe: The reason I asked that question is it seems to me that if there was a fair bit of that in terms of complaints, it would have come in some way or other to government, to members, to the commission, to the registrar or whatever. Again, that in itself would have been quite a sign. If there was none or one, I think that would be relevant too, but in a different direction. I presume they were making their interest payments, their monthly payments and that kind of thing.

Ms. Morrison: They were. They were making their interest payments; there is no doubt about that. For lots of investors, they had no reason to think there was any problem. What happened was that Argosy would go out and get new loans, pay the interest to the investors on the old loans, and the whole thing just rolled along smoothly. There was no problem until you got to the end and did not have any money to pay back the principal. I do not think there is any doubt that most investors were getting their interest cheques, which is what they expected.

Mr. Ashe: The reason I asked that question was not really so much in terms of the protection, because we know what happened in that; it was more the awareness of people who could have done something about it sooner. If they were meeting the obligations, the complaints to whomever, including, frankly, the local members in some cases, did not happen.

Dr. Anisman: There were instances where the term of mortgages ran out and the principal was not paid, and that would mean investors did not get paid. They may simply not have complained, but there are a number of examples of that occurring, or at least of the term being extended without Argosy getting the principal paid.

Mr. Philip: I wonder if I can ask this, because maybe you can help us, but no doubt we will be asking the Ontario Securities Commission.

Until the debentures are released, there is no need for the filing of a prospectus, because it is the securities commission's position that these are not in fact securities. Under the act that was then in place, a security is defined very broadly. What is the rationale, from your understanding, for the securities commission to rule that these were not in fact securities?

Dr. Anisman: There is not much evidence as to what the rationale was. The definition of a security is very broad indeed, and one element of it that most securities lawyers and courts focus on in analysing it is the meaning of investment contract, which is normally defined in a manner that is designed to encompass any form of investment vehicle; at least, any form of investment vehicle in which the investor obtains his benefit from the efforts

of others. I am skimming over it to avoid the technical elements of the definition.

The evidence the Ombudsman discovered was a statement that the investment vehicles, the interest in syndicated mortgages, were simply not securities, with a follow-up that the comfort was received in making that decision from the fact that Argosy was registered under the Mortgage Brokers Act and from the quality of the disclosure the documents in hand seemed to indicate.

Beyond that, I cannot answer what the basis of that decision was. You would have to ask the securities commission.

Mr. Philip: So you are saying, in layman's language, it was not a security because it was a mortgage?

Dr. Anisman: That may have been the conclusion; I do not know.

The problem with my saying that, and I do not want to say that in layman's language, is that the definition of a security is a relatively complex legal question that involves a number of factors and a number of elements of judgement, and it is ultimately a question of judgement.

To say an investment vehicle is a mortgage is not to say it is not a security. In fact, under our Securities Act, mortgages are securities. They happen to be, in some circumstances, exempt from certain provisions of the act, but they are securities. To say it is not a security, in terms of a security lawyer's analysis, is to reach a conclusion that it is not an instrument within the definition of the act, on the basis of the kinds of factors that go into making that judgement.

Mr. Philip: I want to see how you are weighing the guilt, if you want, or the omission of the securities commission. Is it your position that the major omission on this one set of circumstances we are talking about was (a) that it was a security and that the Ontario Securities Commission did not see it as a security or (b) that it might have been a security and that the Ontario Securities Commission in fact did not do an adequate investigation to find out whether it was or was not a security? Where are you on that?

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Dr. Anisman: Perhaps I should put the answer to that into the structure of the act, because it is a question that has to be viewed in terms of the act. As I say, the act has a very broad definition of securities that includes mortgages. It is clear under that act that mortgages are securities, because there is an exemption in the act from the requirements to register, either as an issuer or a dealer dealing in mortgages, under the statute itself, which makes clear that mortgages are securities.

The question then, at least in terms of the way I view the act and in terms of the way the commission's decisions have tended to view the act, becomes one of whether the particular instrument involved is a mortgage within the exemption and whether the exemption is subject to denial by the commission. The commission has the power to deny it.

The factors that go into determining whether an instrument is a mortgage or an investment contract, another type of security, have to do with a number of tests developed by the courts. I do not want to get too technical, but they

are designed to indicate whether the instrument is essentially an investment vehicle.

There are two types of tests. You will see in the documentation that one is a test called the Howey test, which has four elements, all of them designed to determine whether the instrument is an investment rather than a direct participation by an entrepreneur. They are whether a person has put out money in a common enterprise with a view to profit from the efforts of others. Those are the four criteria.

There is another test that amounts to the same thing. I do not want to be too simplistic, but at the same time I do not want to get too complicated. In order to determine them, courts have tended to look at a number of factors involved in the real instrument. They have looked at factors such as the manner in which the vehicle is sold or the representations made to investors; in other words, a number of factors designed to determine the kind of understanding that investors have of what it is they are buying and whether they view it as an investment.

Mr. Philip: If it is merchandise like the security, then that would be one of the criteria for suspecting it is a security, or at least for investigating whether it is a security or a pseudo-security.

Dr. Anisman: That is right. One of the ways of determining that is to see how the instrument is actually sold and the nature of the representations actually made to investors.

Mr. Philip: To the best of your knowledge, from what you are looking at, the securities commission did not conduct that adequate investigation?

Ms. Morrison: Right. So we say both things. The answer to your question essentially is that it was wrong in deciding it was not a security, and it did not make a proper investigation in order to arrive at a decision about that; so the decision in that respect was wrong and unreasonable.

Mr. Hennessy: Listening to all the questions and the different answers, it makes you wonder who knew the company was not doing well. It seems very odd. If something goes wrong--even in a family if things are not going well, the word gets to somebody that things are not going well with Mr. and Mrs.; there are rumours on the street. Yet something like this was a well-kept secret. Even some of the people who worked for the firm got stuck. It seems very odd. If the firm was not going well, there would not be any money to cash the cheques. There would not be any money to take long-term mortgages and other transactions like that. With any other company you deal with you get a letter seven, eight or 10 days before telling you here is your cheque; if you want to renew, you have such a date to renew.

What seems very odd about this is that there was nothing on the horizon that there was going to be a storm. The first thing you know, you wind up with an earthquake, and nobody is left anything. Only a few people seem to know--only, I guess, the good Lord and these three or four people involved knew what was going to happen, which is very odd from what I hear now.

Dr. Anisman: There were storm warnings as early as 1969.

Ms. Morrison: The registrar of mortgage brokers had a lot of concerns about the operation of this particular company. In fact, he eventually revoked its registration because he thought it was not a company

which dealt fairly with people. The OSC had concerns. The investigator at the securities commission told the company to stop doing whatever it was doing until the commission could have a look at it, so there were concerns about the way this company operated.

Mr. Hennessy: Concerns to whom?

Ms. Morrison: Concerns by the people who were supposed to regulate it.

Mr. Hennessy: But the people who invested did not know these concerns.

Ms. Morrison: No.

Mr. Hennessy: That is their job. That is what we are paying them the taxpayers' dollars for, to advise them what the problems are, not to advise the companies.

Mr. Philip: I have one further question along that; something that I do not understand. Again, we will be asking the securities--

Mr. Shymko: I have a supplementary to that.

Mr. Philip: All right. If Mr. Shymko wants to ask something on that.

Mr. Shymko: Following the questioning by Mr. Hennessy, I was not too clear. On November 26, 1973, someone, a division solicitor, advised that the case for the revocation of the registration was not strong enough. In other words, on page 30 of your report, someone apparently felt that the registration should not be revoked because the case was not made strongly enough. Who is this division solicitor?

Ms. Morrison: A solicitor in the ministry.

Mr. Shymko: In the ministry. So, in fact, we are saying that the ministry is saying that the registration should not be revoked because the case is not strong enough.

Ms. Morrison: There was a revocation hearing, a Commercial Registration Appeal Tribunal hearing on appeal from Argosy. There were some negotiations going on prior to that to see if they could settle the matter.

Mr. Shymko: There is a memorandum to that effect on the negotiations.

Ms. Morrison: That is right.

Mr. Shymko: The memorandum ends with the words of whoever that division solicitor is saying, "I advise that a case for revocation is not strong."

Ms. Morrison: That was the solicitor's view.

Mr. Shymko: Was that a personal view or do you consider that the view of the ministry?

Ms. Morrison: That was the solicitor's view to whoever he was reporting to. He had been involved in negotiations.

Mr. Shymko: Would his view be treated with respect?

Ms. Morrison: It was. In fact, at the tribunal hearing, presumably some of the details of the negotiations that he had carried out with Argosy were taken into account. In the end, there was an order with some consent terms, which were part of the results of those negotiations.

Mr. Shymko: So I see the ministry in that memorandum pretty well saying just to register him and let him do his thing.

Mr. Philip: I wonder if I can ask one question, then, that stems from my original. Throw your mind back into definitions of securities; what is not a security, what it did with it and so forth. On August 29, 1975, the Ontario Securities Commission rules that it is not a security and takes some comfort out of the fact that it knows that the registrar of mortgage brokers is taking care of all this. It is interesting that at no time does it contact the registrar of mortgage brokers to find out whether there is any activity or information that could shed light on whether it is a security or whether there is any activity that would interest it, but that is not the essential point to which I am leading.

What I find very interesting is that on August 29, 1975, it says that it is not a security. You say it did not do adequate investigation, and you present some evidence to it. I hope I am not getting ahead of you, but in 1976, the Supreme Court comes down with a decision as to exactly what is a security. What I find interesting is that I do not find any evidence that the securities commission would say: "We have a new definition. Maybe we had better review recent decisions"--and how much more recent can you get than August 29, 1975, the previous year--"in the light of the new Supreme Court definition to find out whether we are correct in exactly what we decided at that point or whether we should review this matter."

Ms. Morrison: In fact, it was brought to its attention again shortly thereafter, in August 1977, by the investor who sent in all the documents. At that time, knowing there was a relatively recent Supreme Court decision on the subject matter, it does seem surprising that it did not go back and look again at the definition of security. Essentially, what we see is a decision in the first instance that it is not a security and, from then on, no serious reconsideration of that decision.

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Mr. Philip: Would you happen to know whether they investigated other decisions regarding whether certain investments were securities other than the Argosy one on which they made a decision? Did they go back and look at those other ones in the light of the 1976 court decision?

Ms. Morrison: You can tell him about the court case in August.

Dr. Anisman: In fairness, the Supreme Court decision in 1976 upheld an Ontario Court of Appeal decision, which was decided about a month and a half before the Ontario Securities Commission made its decision in 1975. Both of the decisions were very broad and involved a very broad reading of the meaning of "security." Mr. Stransman has argued that the definition was in flux until 1976 when the Supreme Court decided it, and the Supreme Court's decision was very expansive. But prior to that, there had been decisions of the securities commission on the meaning of a security, which were rather wide themselves. I would say the Supreme Court's decision made clear that the

broader reading of the definition was the proper one. I do not know whether--

Mr. Philip: That was not my question.

Dr. Anisman: No, I am about to come to that, but in fairness I wanted to put a bit of perspective on the one decision.

I do not know whether they went back--this is in answer to your question--and reassessed earlier decisions in the light of the Supreme Court decision. In subsequent proceedings before the commission, they did attempt to apply the decision of the Supreme Court, but I cannot say whether they went back and reassessed earlier ones.

Mr. Philip: You see, if they did reassess some and not this one, then there is an obvious admission that they made a mistake on this one. If they did not review any of them, then that may be a different type of error, but it may not be as directly an error related to this case if you can follow my logic.

Dr. Anisman: I understand that.

Mr. Philip: I am not a lawyer, so all I can rely on is philosophy 101, 102, 103 and whatever else.

Dr. Anisman: I cannot say that we have discovered any admission of the type you have just described.

Mr. Philip: Thank you.

Mr. Offer: Just a quick question on the positions you take with respect to "unreasonableness" and "wrong." Is that based in the main on the fact of the 1976 decision?

Dr. Anisman: It is based on all of them actually. The position applies to the 1975 decision for a number of reasons.

Mr. Offer: I am sorry. I want to be very clear. In 1976 the Supreme Court issued a decision dealing with the definition of "security." You have subsequently come out with a position of "unreasonableness" and "wrong" on the basis of the OSC. Is the position you are taking based on that decision of the Supreme Court of Canada, understanding that you have already indicated a prior Court of Appeal ruling?

Dr. Anisman: As I understand it, you are asking whether our conclusion about the 1975 decision is based on an analysis of a later Supreme Court decision that was handed down after the commission made its decision. The answer is no. As I just indicated, the Supreme Court's decision settled a number of points but did not alter the general approach to the definition of "security" that had been adopted in the lower courts.

Mr. Offer: When you say the lower courts, are you talking about the Court of Appeal decision?

Dr. Anisman: And the Ontario Divisional Court decision that preceded it.

Mr. Offer: Is the foundation for your decision based on the particular case as decided earlier in the Court of Appeal and at the Divisional Court level?

Dr. Anisman: It is not based on those three specific decisions. It is based on an analysis of a number of judicial decisions dealing with the definition of a security and the application of the standards in them to the facts that we have here.

What I was attempting to say is that the decision in the Pacific Coast Coin Exchange case, which is the one that went to the Supreme Court and was decided in 1976, was in the mainstream of the approach that had been adopted by prior courts in that specific case and in other cases, but it did settle a number of points that were left open. None of them, by the way, were relevant to this issue.

Ms. Morrison: Can we go on? Okay.

I am going to say very little about the series I debentures. I am going to say very little because I think that the ministry has essentially agreed, on the series I debentures, that there were problems with the regulation. I think you can see that in your binder, if you look at Mr. Stransman's opinion and also the letter from Mr. Beck. The commission has essentially agreed that there were problems with it.

I will just give you a quick rundown of what happened in the series I debentures so we can get it out of the way. Here we have a situation in which the company, Argosy, has to have two things; it has to get registered and it has to have its prospectus approved. There is no doubt here that this has to be within the securities commission's purview. We do not have a question here as we did with the syndicated mortgages.

Argosy filed a prospectus with the commission and the commission had some concerns. One of their concerns was a financial one, and if you look on page 50 of the report, you will see that they raised this concern and that it was met by Argosy's forwarding to the commission a letter that it had received from the Royal Bank. Essentially, the Royal Bank letter says, "If you like them, I will like them." It says, "Upon completion of public funding--that is, if you let them make this debenture issue--we will be extending their line of credit."

That satisfied the commission on that particular score, for that particular moment. But in the process of registration, Carnie's criminal record came up again. In one of his honest moments, Carnie put it on the form, I guess. The commission was then obliged to review the matter. Note also that the prospectus that was filed with the securities commission said, right on page 1, that Argosy was a registered mortgage broker. Again, we see all the way through this story a situation in which the two arms that are regulating Argosy never get together, although there are lots of signposts, one to the other.

The OSC had heard of Argosy before. The last time it had heard of Argosy was the situation with the syndicated mortgages, where it said: "Never mind, we do not have to worry about it. We know the registrar of mortgage brokers is worrying about them."

In this case, they did go into some review of Carnie and his criminal record. Reviewing the criminal record--that is the only information he was reviewing at this time--the director said, "No, we cannot allow this debenture to go forward."

There was an appeal to the commission, and the commission asked a lot of

fairly detailed questions about Carnie's fraud. It asked him about his mortgage business, as I mentioned before, and, at this time, was very concerned to know whether he was rehabilitated. He has a criminal record, but that will not bother them if he is rehabilitated.

We know that the registrar has all kinds of information about Carnie's operations of various kinds, has information about the fact that he did not do the things he was told to do on probationary registration, has a lot of information about the modus operandi, as they call it, of this company.

If the commission seriously wanted to find out about Carnie's character and his rehabilitation, a call to the registrar might not have hurt. Had they called the registrar, they might have had information which would not have allowed them to make the decision that they eventually made, that in fact his criminal conviction should not get in the way of his registration.

Mr. Philip: Would it not be normal for the securities commission, having a hearing like this--since the company is registered as his principal occupation, his profession being mortgage broker--to ask whether the registrar of mortgage brokers wished to give evidence at that hearing?

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Ms. Morrison: I think that is a question you will have to ask the ministry. It is not something I would be able to answer.

Mr. Philip: As a layman, though, it somehow makes common sense. If somebody comes to me and says, "I really need this, because I am really a good boy, practising as a teacher," or as a nurse, for example, the first thing I would do is to check with the college of nurses to find out whether his or her right to practise nursing was lifted or not. You are saying that did not happen.

Ms. Morrison: That did not happen. In the end, the commission decided that his conviction should not get in the way of his being registered, but it was a very limited decision. It essentially said, "It is okay for them to go ahead and be registered to issue, but we have to look at the debenture issue itself."

The company filed a new prospectus, which sailed through with no particular problems. The only note of gloom on the whole file was that at the very end, one of the commission staff put a memo on the file which essentially said: "Watch out for this guy. Watch him next time."

We do not have to discuss this particular series for very long, because both Mr. Stransman and Mr. Beck, as I understand it, agree there were problems with the regulation of this series.

Mr. Philip: Is it your contention that if the securities commission had the information the registrar of mortgage brokers had in his file, the prospectus would not have been approved?

Ms. Morrison: Let us say their main concern was whether this person was rehabilitated. He was known to have a criminal record. His criminal record was known to be one which related to forging types of transactions.

It does appear to me that if they had the information the registrar had about this person, they might have had to give more serious thought to whether

he was rehabilitated or not. We found it to be unreasonable that they did not make any attempt to get this information, although as you say, he was registered with the registrar of mortgage brokers.

Mr. Philip: But the prospectus was approved. Essentially, then, they would have said yes, or no, or "You are going to change the prospectus" in some way.

Ms. Morrison: The decision about Carnie was a quite separate one from the decision about the prospectus. The decision about Carnie was, "He is okay, even though he has a record." But the decision specifically said, "Go back and look at the debenture issue on all its other merits."

When the new prospectus was filed, none of the questions were raised. We cannot find any review on the merits of the debenture issue itself; it just went straight through.

Dr. Anisman: In other words, if I may supplement that, the question of Carnie himself and his character went to whether, on that ground alone, Argosy would have been precluded from issuing the debentures to the public. Once that decision was made and he was found to have been in effect rehabilitated, then the commission still had the jurisdiction and the responsibility to review the prospectus on the merits of the issue, apart from Carnie's character.

With respect to Carnie's character, I think it is worth pointing out to you that the commission, in its decision, overruled the director. Perhaps again I should put a bit of perspective on this. The question of Carnie's character came before the commission because the director of the commission had decided that Argosy should not be permitted to issue the securities because of Carnie. Carnie then appealed that decision to the full commission. The full commission overruled the director's decision, and in doing so emphasized the fact and said clearly that he had a clean record since the conviction in 1969.

Mr. Philip: If we separate Carnie from the prospectus, in your view, was the prospectus adequately examined? Leaving aside the principal wheelers and dealers in the prospectus, on its own merits, did it have an adequate scrutiny as a prospectus? Supposing Cardinal Carter owned the prospectus--

Dr. Anisman: I can still say no to that. I think Mr. Stransman and Chairman Beck have both conceded that that prospectus did not receive proper scrutiny.

Mr. Philip: They are guilty on two faults then, according to you: One, that they did not do an adequate examination into Carnie by way of examining whether or not his character reference for himself stood up by contacting the registrar of mortgage brokers, and two, that the prospectus itself, notwithstanding Carnie, would not have stood properly if it had been adequately examined.

Dr. Anisman: That is correct. I might add that the decision with respect to Carnie would have governed all subsequent conduct of Argosy, had it been decided.

Mr. Philip: I do not question that, but it is more serious if it is on two counts, rather than on one.

Dr. Anisman: Yes.

Ms. Morrison: I am taking longer than I promised.

Mr. Philip: I am asking more questions than I promised.

Ms. Morrison: On to the series II debentures. Series I debentures were a great success. They sold like hot cakes. No problem. Five months after the series I, Argosy, on to a good thing, decided on a series II debenture. This series of debentures received very extensive review. The reason it received very extensive review was that there were very many concerns with it.

It was reviewed for about a year. Various legal questions were raised. The question of the syndicated mortgages as securities reared its ugly head again on this review. The financial state of Argosy was questioned. The accounting practices were questioned, as was the possible application of certain policies of the Ontario Securities Commission. All these matters were reviewed extensively by the securities commission.

Some of the matters they raised were matters that it would be quite normal for them to assume were matters the registrar of mortgage brokers might know something about. For example, they raised a concern about finder's fees and brokerage fees in general. These would be the kinds of things they might expect the registrar to know something about. Again, there was not a contact between the OSC and the registrar.

Some of the considerations they were looking into were ones that would have been quite serious to Argosy. For example, they looked into the matter of the application of what is called policy 3-25. That policy, which could have been used as a guideline for Argosy, would have meant that the company had to meet certain requirements, not just the debenture issue. The company itself would have to be a company that met certain requirements.

They had very many doubts about the issue of this debenture. The commission staff brought up numerous concerns, but in the end the debenture series was passed. One of the very serious concerns they brought up was the allowance for doubtful accounts and there was a fair amount of toing and froing about whether the allowance for doubtful accounts was an appropriate amount.

To give you a ball-park figure of what kinds of dollars we are talking about, the allowance for doubtful accounts was \$360,000. If there was an outstanding amount of money at this time of about \$30 million, that was about one per cent. The commission questioned the allowance for doubtful accounts and reviewed the unpaid account on the collateral mortgages. The collateral mortgages are the wraparound kinds of individual mortgages we were talking about before. These were about \$2-million worth of Argosy's business. They did not review the unpaid accounts related to the syndicated mortgages and the syndicated mortgages were about \$20-million worth of Argosy's business. At the time they were conducting this review, all the syndicated mortgages were in arrears.

There were meetings; there were discussions. The commission had a meeting with auditors and bankruptcy experts, etc. Finally, they asked for what they call further comfort. If you look on page 342 of the material in the binder--I have to find my binder--you will see the letter that finally solved the problem. I would just like to draw to your attention some of the features of the letter. This is a letter from Thorne Riddell. Have you found it, on page 342?

1530

Dr. Anisman: Some of you are looking at the materials handed out this morning. It is the three-ring binder; this one.

Ms. Morrison: You will see from the letter that it has been requested to provide the Ontario Securities Commission with some comment on fairness and adequacy of allowance for doubtful accounts, etc. Essentially, what this letter says is that they have not received any information that would give them reason to say that things are not right. If you read the line just before (a) it says: "...nothing had come to our attention which would give us reason to believe:

"(a) that such unaudited interim consolidated statements were not prepared in accordance with accounting principles...do not present fairly the information purported to be shown thereby...."

In other words, they are essentially saying that they do not have any information to tell it that things are bad. They do, however, go on to say that if they were going to get that information, they would have to do certain things. They say that they have not done those things. They have not taken the additional steps that they would need to provide a positive opinion. All they can provide is an opinion that no information has come to their attention to give them anything negative to say about the company.

You will see on page 3, "It should be understood that we were not instructed to nor have we taken any of the additional procedures in order to provide an opinion on fairness and adequacy in connection with the allowance for doubtful accounts." They say they cannot tell it very much unless they do these additional things and they have not done those additional things.

This was the so-called comfort relied upon to say that the series should go forward. A number of commission staff felt strongly that there were problems with this, but in the end felt there was nothing further they could do. They signed off the docket, as they say, and said "Go ahead," but there is no doubt from our interviews with them and from the information they have put in writing that they had very serious concerns about this debenture series.

Looking at the letter from Thorne Riddell, one of the things you can do is see whether it would provide you with comfort if you were reading that letter in respect to the questions raised by the securities commission.

Mr. Ashe: One of the things that strikes me on this issue--it is now relevant on the Thorne Riddell situation--is that we are not talking about a corner accounting firm with two employees who are both in the hip pocket of the company. We are talking about one of the most highly respected accounting firms, substantial in size. Frankly, as I would the Royal Bank of Canada as a rather large financial institution, I would put more reliability on that than if it were a corner two-person accounting firm or a corner two-person trust company.

Ms. Morrison: I agree.

Mr. Ashe: I kind of disagree with your conclusion on that one. It may have been, in hindsight, put in a different context. I do not think that anybody, obviously, in hindsight can disagree with that.

Ms. Morrison: To make it very clear, I was not saying that one

should not rely on Thorne Riddell as a very well known accounting firm. I am saying that Thorne Riddell gave a very conservative opinion, very couched with "and if" and "moreover." I am asking, did what they say convince you that there were no problems?

Dr. Anisman: If I may supplement that, the second Thorne Riddell letter on page 342 of the book was in response to a request from the commission accountant asking for an opinion that the allowance for doubtful debts was adequate. What he was asking for was direct comfort on the adequacy of that one part of the financial statement. The letter on page 342 simply does not give it. It is like many of the questions that I notice have been asked here and some of my own answers, which may not have been as responsive as they should have been.

They do not answer the accountant's question. They basically say: "We have done this kind of work. We cannot give you the answer to the question you asked because we have not done another kind of work."

On the basis of that letter, the accountant signed off. The basis of the Ombudsman's conclusion is not a criticism of Thorne, Riddell for not having given a different letter. It is that this letter was relied on as answering a question other than the one that was asked, which it did not satisfy, in circumstances where the staff members responsible for reviewing the prospectus were not themselves satisfied, and in circumstances where an investigation to determine full and true facts would have been warranted and was not conducted.

It is not simply a question of the reliability of an accounting firm.

Mr. Ashe: In the view of the Ombudsman's office, what then is the responsibility of the commission in ascertaining financial records in the context of an auditor's report? As I understand it, they do not have the capacity or responsibility to do an audit on everybody. They have to rely on a hopefully reputable auditing firm.

Dr. Anisman: The staff does review audited reports and ask questions, as they did here.

Mr. Ashe: I think they have a qualified accountant on staff, if not more.

Dr. Anisman: Yes, a number. I am sure the commission can tell you how many. I cannot, but there are more than one. They do review financial statements and they do ask questions. You will notice that on the second prospectus there were additional elements added to the financial statements, which may have been responsive to a question.

To answer your question, it seems to me that the responsibility of the commission staff is not always to go behind an auditor's report, but in circumstances where the staff believes that there may be something questionable about the company and is of the view that the auditor's report does not fully reflect the company's position or does not provide enough information, for whatever reason, including that the auditor has not done an audit--which in this case was true of the preceding nine months--then the staff has an obligation itself to go further.

In other words, I am saying that in normal circumstances, I think the commission staff can rely on professionals, but in circumstances where they have enough facts to indicate to them, and especially here where they actually

believe, that something is amiss, then they have an obligation to go further.

Ms. Morrison: To point up a couple of things just to conclude that discussion, you will see on page 71 that the prospectus accountant, the person reviewing the prospectus for the Ontario Securities Commission, noted his concerns about the file in the following terms, "Argosy is a finance company that appears to be in a great deal of trouble." This was his view of the matter, and this finance company in a great deal of trouble nevertheless went forward with a new issue of debentures.

On page 73, you will see that there were certain reservations by staff members about Argosy that they felt they could not further address and that they felt they were not encouraged to pursue. In the end, the debenture series went forward.

The very last thing I want to talk about is the registered retirement savings plan. Again, this is an area in which we have little quarrel. The RRSP was going on at the same time as a number of other things were going on. Close to the end of Argosy's career, it kind of got frantically into every possible kind of transaction.

The debenture series was being reviewed but there was no communication between the people reviewing the debenture series and the people who were looking at the RRSP problem. The RRSP problem came up when the solicitor from Argosy informed the commission that Argosy had in fact been selling RRSPs for a couple of years. They had not had any registration to sell them. The commission's solicitor who looked at it said, "We had better be regulating these RRSPs."

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It was the time of year for RRSPs. It was the time just before tax returns are required and the commission solicitor said, "These must be regulated, but because of the time of year it is, let us give them a month to sell RRSPs and then look at the question." In the end, lots of people bought RRSPs from Argosy during that time, mostly in the form of syndicated mortgages. A number of them even bought them after that time.

The Ombudsman felt that the exemption was an unreasonable one. It was unreasonable because there was no doubt that by this time there was lots of history to Argosy with the securities commission. He felt that the exemption was unreasonable and that the failure to follow up on the exemption was unreasonable, so they said, "Argosy, sell RRSPs for one month." No one ever checked, after the one month, to see whether they, in fact, had stopped selling RRSPs.

As I say, it appears that we do not have a difference of opinion with the ministry with respect to the RRSPs. Both Mr. Stransman and Mr. Beck have mentioned the RRSPs and appear to agree with the Ombudsman's finding that the commission's review of the RRSP series was not reasonable.

Mr. Philip: May I, as a layman, try to work through the procedure. If the director is suspicious of something or if his ears go up on a particular matter, he can refer it to the commission for further investigation, inquiry or hearing.

Ms. Morrison: No, the director makes a decision. Usually, how it gets to the commission is that the director makes a decision. For example, he

says no to the registration of someone as a securities issuer. The applicant then has the right to appeal to the commission. That is how it got to the commission in the case of Mr. Carnie's registration, for example.

Mr. Philip: So the commission then makes a decision--

Dr. Anisman: That is one way it can get to the commission. There are two other ways in which a matter can get to the commission. One way is that the director, under the current act, has the power to refer a question relating to a prospectus.

Mr. Philip: Right, that is what I was referring to. Is that how this gets to the commission or--

Dr. Anisman: No.

Mr. Philip: I am trying to go through a very complicated act and I want to see the procedure and track--

Dr. Anisman: You have hit a fourth way of getting to the commission. It is not through the director at all. The RRSP application would be made by the company itself for an exemption from the prospectus requirements, and it would be made under section 73 of the act you have in your hand. I was going to say that there is another way of getting to the commission as well, and that is, that the commission has the power to order an investigation in any circumstances where it thinks it is warranted.

Mr. Philip: I assumed it was subsection 60(7). I gather that is not the relevant section then.

Dr. Anisman: No, that is the referral section.

Mr. Philip: Okay, so the commission can send it back to the director.

Dr. Anisman: I am not sure it is subsection 60(7), but in section 60 there is a referral provision.

Mr. Philip: Subsection 60(7) of the Securities Act reads:

"(7) The commission, after giving the parties an opportunity to be heard, shall consider and determine the question and refer the matter back to the director for final consideration...." Is that what happens?

Dr. Anisman: No, it is subsection 60(4) just above that I was talking about. That is, "Where it appears to the director that a...prospectus raises a material question involving the public interest....," the director can refer that question to the commission. That would not have been the way the RRSP application was brought before the commission. It would have come under section 73, which authorizes the commission, upon application of an interested person, to rule that a trade--which is what was involved--would not be subject to the prospectus or registration requirements of the act.

Mr. Philip: Under this section, then, the decision of the commission is final and there is no appeal. Now, what I understood to be said was that the commission ruled against the prospectus and was overruled by the director. Walk me through that process.

Dr. Anisman: No, Argosy was before the commission a number of times

in a number of ways. The first time we talked about it this afternoon as being before the commission in the form of a hearing was on an appeal from the director's decision, under section 60 of the act you have in front of you, with respect to the issue of securities. In fact, that may have been on issuer registration--I do not recall precisely--but it was a decision by the director not to permit Argosy to proceed with the issue. Then Argosy had a right of appeal to the commission from that decision.

In the later matter involving the RRSPs, Argosy wanted to continue to sell its RRSPs without having to file a prospectus. The only way it could get an exemption from a prospectus requirement in the act would have been to have made an application on its own behalf to the commission under section 73 for an exemption.

Mr. Philip: If it does that?

Dr. Anisman: It gets the order.

Mr. Philip: So the director, at this point, on this matter, does not have any decision-making--

Dr. Anisman: It is not clear that the director was actually involved. He may have been. There was a staff lawyer who negotiated or discussed the issues with Argosy and made a number of recommendations to the commission about conditions that should be imposed on the order if it granted an exemption. Part of the Ombudsman's conclusion is based on the fact that there were no conditions imposed on the order. Argosy was simply allowed to sell RRSPs free of regulation, and there was no follow-up to see if it continued to do it beyond the date permitted in the commission's order.

Mr. Philip: The date would be 12 months?

Dr. Anisman: No, the date was the end of February. In effect, they allowed Argosy to continue to exploit the high season for RRSPs, up to the end of February, and gave it an exemption for about a month.

Mr. Ashe: March 1.

Ms. Morrison: Right.

Mr. Ashe: Were all the RRSP moneys invested in the syndicated mortgages? Is that the only vehicle the moneys went to?

Ms. Morrison: That and the debentures.

Mr. Ashe: They were also in the debentures?

Ms. Morrison: Yes.

Mr. Ashe: Do we have numbers relating to the actual receivership numbers, the \$21,681,599, etc.? Do we have the breakdown on how much of that was RRSP money?

Ms. Morrison: About \$4 million was RRSP money.

Mr. Ashe: Do we know the breakdown of where it was? I understood most of it, if not all of it, was in the syndicated mortgages. I was obviously wrong.

Ms. Morrison: I think the debentures were about \$300,000 and the rest of the \$4 million was syndicated mortgage money.

Ms. Morrison: We have been through a number of regulatory events in the life of Argosy this afternoon, and there have been a number of questions which have assisted us in our discussion. I would like to summarize briefly the view that the Ombudsman has of this matter.

Argosy was a company which was subject to certain kinds of regulation by the securities commission and by the registrar of mortgage brokers. Argosy's business was mortgages, and it had to be registered by the registrar of mortgage brokers to conduct that business.

Argosy came to the attention of regulators numerous times, either through complaints or through a process in which it actually had to get permission to do one thing or another. Every year that Argosy was permitted to operate and carried on doing its financial business, more people invested. Each of the regulatory incidents that we have looked at has given us reason to believe that more could have been done, more questions asked and, more important, that the answers to these questions would have been crucial to the continued operation of this company.

Carnie was known to have a criminal record but, worse, his present business practices were suspect. Had more investigation been undertaken, had there been better communication between the regulators, the OSC and the registrar of mortgage brokers, we feel that they would have found information that would have led them to make different decisions with respect to the regulation of this company.

We believe these failures caused the investors' losses. When questioned about the causation in relation to Argosy and the regulators, one administrative law expert whom I consulted put it this way: "If you let a crook look after the cookie jar, you should not be surprised when he steals the cookies."

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Mr. Kerzner: In your recommendations, you recommend compensation only for arm's-length investors. What criteria are you using to identify the non-arm's-length investors?

Ms. Morrison: That is a very difficult problem. I believe this arose in the Re-Mor Investment Management Corp. situation as well. Correct me if I am wrong, Paula. What happened was that the people making the distribution had to receive from people proof of arm's-length investment. It would have to be ascertained in the individual case whether it was an arm's-length relationship or not.

Mr. Kerzner: Are you suggesting, though, that some of the investors, that is to say, people who bought debentures, RRSPs or interests in syndicated mortgages, were not dealing at arm's length with Argosy?

Ms. Morrison: Yes. There were some who were not.

Mr. Kerzner: In the general sense, whom are we talking about? Are we talking about the wives of people? Are we talking about cousins?

Ms. Morrison: Directors of the various connected corporations,

wives, fathers, fathers-in-law. The problem with the arm's-length argument is that we know of some people who invested in Argosy who are very angry to have lost their money, who are nevertheless related to John David Carnie.

Mr. Kerzner: The only problem I am having is, if the committee were to accept and recommend that the House accept the Ombudsman's recommendations, what instruction will be given to those who must make the disbursal as to just who you are recommending compensation for or, put differently, who is to be excluded?

Ms. Morrison: We can make some definitions of what we consider to be at arm's length, the usual proof of arm's-length transactions.

Mr. Kerzner: I leave aside the question of proof. I am more interested in getting defined just who it is you are suggesting be excluded. If that is something you do not want to answer today and want to try and put down on paper overnight, then let us pick up that one tomorrow morning.

Ms. Morrison: Okay.

Mr. Ashe: May I add to that? Are you including the non-arm's-length employees who were not related? As I understand it, some employees were also investors. Maybe they turned back some of their commissions, but they may not have been relations in a blood sense.

Dr. Anisman: The easy definition of a non-arm's-length party would be Mr. Carnie and anyone else involved in the perpetration of the fraud or in a management position who knew all the facts. The difficulty--and this is what we would like to think about overnight--lies in extending that concept beyond people such as employees, who may or may not have known some of the facts when they invested.

Anyone who was not operating in tandem with Carnie and management and who did not know the facts should recover, but the problem is defining that. As Ms. Morrison said, the element of defining it may involve questions of fact on individual applications that will have to be made. We will think more about the guidelines and try to be more specific.

Mr. Ashe: If I may carry on in this track for a minute, have you any idea of the numbers involved? Are we talking 10 per cent of the loss or two per cent? Do we have any feel for it at all? It is relevant to some degree.

Ms. Boothby: We did a very rough calculation from a list of related parties, a document that was on the Ontario Securities Commission files, of directors and clients who may or may not be excluded. They represented something like \$270,000, so my guess is that they are not significant.

Mr. Ashe: I would look upon one of the recipients, let us say, a developer or a group of developers that got some of this syndicated mortgage money, which invested the \$100,000 with the knowledge it was going to get an advance of \$3 million, as having a very vested interest, although there may be no relationship at all other than that it may be a friend of someone.

I appreciate that it is a difficult situation in terms of the numbers. You may very well have some people who, I suppose, never even filed a claim because they knew already that they were suspect.

Ms. Morrison: We will look into that.

Mr. Kerzner: In terms of recoveries, may I take it that when you speak of loss, you are talking about net loss after any recoveries out of the Argosy receivership?

Ms. Morrison: Yes.

Mr. Kerzner: For example, if I had \$10,000 invested and I was one of the lucky people who were going to get some of that roughly \$2 million and my share was \$2,000, your recommendation is that I get 50 per cent of \$8,000, not 50 per cent of \$10,000?

Ms. Morrison: That is correct.

Mr. Kerzner: You also make a recommendation that interest should be allowed, but you do not say anything in your recommendation about the rate of interest that should be allowed. Can you tell the committee what rate the Ombudsman has in mind that the interest ought to be calculated on?

Ms. Morrison: As you know, there are a number of ways of calculating interest, and the way you calculate the interest makes a great deal of difference to the amount of money you end up paying. For example, you could take the average Bank of Canada rate over the period we are talking of here, and our calculations put that rate at 12.07 per cent.

Another kind of calculation you might do is to take the average rate on a nonchequing savings account during that period, which we have calculated to be 9.26 per cent. You could also take the high-risk rate. Certainly we are talking about high risk here, so you might take what is called the high-risk rate of mortgage, which might be the conventional mortgage rate plus three per cent or some kind of high-risk rate.

Mr. Kerzner: If these people had got their money in 1981, I would bet not a single one of them would have gone near anything that smelled even remotely--

Ms. Morrison: --like high risk. In any case, my point is that there are a number of different ways of arriving at an interest rate. In our report, we have not suggested how that interest rate should be arrived at, nor have we suggested how the interest should be calculated.

Mr. Kerzner: That was going to be my next question, whether you are recommending simple or whether you are recommending compound.

Ms. Morrison: We have not made a recommendation either way. We felt that interest should be paid to these people and we felt that the interest should be reasonable, but we did not make a recommendation on either the rate or the way of compounding it.

Mr. Kerzner: Do you have one you want to make now to the committee?

Ms. Morrison: We will bring a specific recommendation to you tomorrow, if you wish.

Mr. Kerzner: I think that might be helpful as well.

Mr. Shymko: As I recall some of the recommendations this committee has had in terms of interest rates, we normally follow the courts of justice rate as applied. I recall workers' compensation cases and others. Would you be inclined to look at the courts of justice rate at a simple, compounded rate?

Ms. Morrison: We will certainly look. We will give you the figures we think are appropriate and we will take that into account.

Mr. Kerzner: In view of the wide-ranging interest rates we have had for the last six years, for those of us who rushed out in the summer of 1981 to issue all our writs because interest rates were 22 per cent, when we got to trial in 1985 or 1986 and told the judges it has to be 22 per cent because that was the rate the month before we issued the writs, they have all been telling us that may be what the technicalities are but there is a general discretion to alter the rate, and they have been averaging through the period of time between the issuance of the writ and the trial. You will find that they use this bank average rate quite frequently.

Can I turn to the question of the percentage you are recommending? As I read your report at page 112, you point to two things: one, the fact that there was a fraud that contributed to the loss; and two, there is some risk that people take, knowingly, when they make investments, and you say those two factors ought to result in some reduction.

Let me deal first with the fraud. If I understand the thrust of the Ombudsman's case, at least in respect to the registrar of mortgage brokers, it is that they were dealing with an essentially dishonest person who had no honesty or integrity and that he was permitted to continue to operate. A fraud or a theft seems to me to relate to the actions or conduct of a dishonest person who does not have any integrity. Given the nature of the case you make against the registrar in respect to Mr. Carnie, I am wondering why you even felt any reduction ought to have been made in respect to the fraud.

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Ms. Morrison: In considering the effect of fraud, I believe part of our reasoning was to say that the regulators themselves were the victims to some extent of Mr. Carnie's fraud. There was regulatory failure. There was also fraud on the investors and fraud to some extent on the regulators.

The other consideration we had in coming to a 50 per cent rate was that these investors took some risk and in strictly policy terms, the Ombudsman did not feel it was right to recommend 100 per cent, which would be the result of the argument you are making about the registrar of mortgage brokers, and in the end constitute an insurance scheme in this kind of investment problem.

The Ombudsman's reasoning was essentially that there was more than one cause for the loss and in overall policy terms, the 50 per cent figure appeared to the Ombudsman to be the kind of compensation that would compensate the investors partially for errors and omissions on the part of governmental organizations as found by the Ombudsman, but on the other hand would not suggest that government act as insurer to investors.

Mr. Kerzner: In your report, you speak in connection with the risks the investors must assume, of "risks knowingly undertaken by them." In your recommendation, you treat syndicated mortgage investors the very same way as you treat purchasers of debentures. In the case of the debenture purchasers, they would have had available to them the disclosure information in the prospectuses, which the syndicated mortgage investors would not. Can you tell us why there was no distinction in the recommended treatment of those two classes of victims, bearing in mind that the debenture holders had a lot more information on which to base their investment decisions?

Ms. Morrison: Do you want to answer that?

Dr. Anisman: I will try. The reason for that is that in terms of--the 50 per cent figure is an attempt at accommodating a variety of interests. With respect to the debenture holders who bought under a prospectus, they bought under a prospectus that did not contain full disclosure. The regulatory failure there was the failure on the part of the commission to do further investigation and find the truth, which would have either prevented the issue altogether or would have disclosed that Argosy was in a negative cash flow position at the time, in which case the investors presumably would not have invested. In other words, their loss is equally attributable to the regulatory failure. They did not have full disclosure about Argosy.

Mr. Kerzner: Do you agree with the proposition, though, that the debenture purchasers had a lot more information and a lot more disclosure than did the syndicated mortgage investors?

Dr. Anisman: They appear to have had more disclosure. The problem was that it was not full disclosure, which did not enable them to make a rational investment decision.

Mr. Kerzner: Do you agree that in the case of the series II debenture purchasers as distinct from the series I purchasers, the extent of the self-dealing in the mortgage investments to related companies was disclosed there but was not disclosed in the notes to the financial statements that were in the prospectus on the first series debenture, and nowhere near to the extent?

Dr. Anisman: I would have to look at the first series again and compare it with the second. I do not think there was adequate disclosure of the related transactions in the second either.

Mr. Kerzner: In the second, do the footnotes to the financial statement not indicate that roughly 50 per cent of the syndicated mortgages were advanced to a related company?

Dr. Anisman: Yes. You are thinking of note 9(c).

Mr. Kerzner: That is right. Would that not tell an investor that the money he was putting into the syndicated mortgages was to a significant degree being lent to companies in which people associated with Argosy had an interest?

Dr. Anisman: Yes, it would tell him that.

Mr. Kerzner: Would that not be a lot more information on which to base an investment decision than the people in the series I debenture had on their prospectus?

Dr. Anisman: Assuming there was no equivalent to note 9(c), and I would have to refresh myself, it would tell them more, but it would not tell them enough to make a difference. I see where your line of questions is leading. You are saying that it leads to the effect that more information is better, even if it is incomplete. The problem with that is that a decision is made only on the information available in the prospectus and what was not there, on my analysis of the information I have about those mortgages, was

that more than 90 per cent of the mortgages involved some kind of related transaction in the broader sense I defined earlier.

In other words, the fact that more information is there does not make a big difference in terms of the causal link between the loss, given that the material information that was relevant, and would have shown that Argosy was in a deficit position, was not there.

Mr. Kerzner: I am dealing with the comments in the Ombudsman's report where he seems to acknowledge that for risks knowingly undertaken, for that sort of thing, investors should be carrying the can. If you have a group of victims each of whom knew either more or less than the other, depending on whether you are going up or down the scale, why do you not, in terms of the percentage you think each investor ought to bear, attempt to distinguish between the degree of knowledge each class of the three--mortgages, series I and series II--would have had? Why not distinguish between the degree of information they had on which to base the risks to be undertaken by them?

Dr. Anisman: Because the determinative information was unavailable in all cases.

Mr. Kerzner: If somebody wanted to be concerned about the amount of self-dealing and the risk that he was not really buying a piece of a mortgage, but was in effect lending money to a bunch of developers and land speculators, albeit through an indirect group, why would he not be better informed about that risk by the series II prospectus than any of the other people in the series I debenture or the mortgages?

Dr. Anisman: He may have been better informed, but he still would not have known the full risk he was bearing. The point is that given that the full information and the information that would have come out of a full investigation would likely have deterred them from investing at all, the fact that there was partial information, but still incorrect information, does not make a difference in degree of fault, and ultimately in degree of compensation. Then what one is doing, and where this line of questioning leads one, is to impose a responsibility on a person who did not receive full information because only half the story was there in one case and a quarter of the story was there in another.

In both cases, the decision was made with incomplete information and would likely have been made otherwise with complete information.

Mr. Kerzner: But why does that not make a difference in the degree of risk that it would be fair to ask an individual investor to assume?

Dr. Anisman: Because the essential element that goes to the decision-making process is missing in both cases. In other words, I think the suggestion implicitly is that the series II debentures were visibly riskier investments than the series I, but that would have been compensated for in what was bought and what they thought they were buying. In both cases, they bought without having adequate disclosure.

Mr. Kerzner: Ms. Morrison, let me move on to something else. Under section 18 of the act, the Ombudsman is permitted but not required to stop his investigation and not proceed with a recommendation where there might be some adequate alternative remedy available in a court or some other place. In this particular case--as I indicated, the Ombudsman can stop but is not required to stop--can you tell us what considerations, if any, the Ombudsman gave to the

potential for recovery by the investors through other sources, such as lawsuits against banks, auditors and directors? If so, what consideration did he give and what, if anything, led him to conclude that he ought to carry on, notwithstanding that there might be these other avenues available?

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Ms. Morrison: This is a question that as you might expect comes up often in our office, whether an alternate remedy of going to court is a useful one to the complainants. In this particular case, the complainants came to us complaining about regulatory failure. The Ombudsman cannot just say, "I do not feel like investigating a complaint about regulatory failure because the person has another kind of lawsuit against the bank."

The Ombudsman did exercise his discretion to hold the investigation in abeyance while other procedures, the criminal investigations and so on, went forward. It was not until that was completed that we began our investigation. The Ombudsman did not consider that sending away our complainants to the auditor, the Royal Bank, whomever you are suggesting they might have sued, to be an adequate, alternate remedy to the complaint they brought to the Ombudsman.

Mr. Kerzner: Why did the Ombudsman feel it was not an adequate alternative remedy?

Ms. Morrison: Partly because of the kinds of things the Ombudsman looks at in this circumstance. For example, most of these people do not have the wherewithal to pursue a long, expensive court decision. Many of them are very small investors. If you look at our complainant profile, you will see that about half of them had between \$5,000 and \$10,000 invested here. A loss of \$5,000 or \$10,000 is going to be very difficult to pursue through an action against the Royal Bank or Thorne Riddell. It was just not an adequate alternative remedy for these people.

Mr. Kerzner: But the Ombudsman did put his mind to that and considered the adequacy?

Ms. Morrison: That is always part of our initial review of a complaint, but we are not at liberty just to investigate some complaints and not investigate others.

Mr. Kerzner: In connection with the December 1973 Commercial Registration Appeals Tribunal order, in addition to the agreement entered into between the registrar and Argosy and Mr. Walker, there was one additional term that was inserted by, it appears, the tribunal in the order made in December 1973, and that was that John David Carnie not hold but transfer to someone else his shares in Argosy Investments Ltd.

That seems to me, however, to have been a rather useless sort of term, bearing in mind that Carnie did not beneficially own any shares in Argosy Investments Ltd. His ownership was further up the line in Argosy Finance and through Wilcar. Did your investigation disclose where it was that the tribunal got the idea that Carnie owned beneficially any shares in AIL or that the inclusion of that particular term in its order would have any practical utility whatever?

Ms. Boothby: I do not think we were able to establish where the idea came from.

Mr. Kerzner: It may have been suggested by one of the members of the tribunal, but somebody must have given that tribunal some information as to what the share structure was and where the real ownership that Carnie had lay. I am wondering whether you have any indication as to whether that came from the registrar, in which case this committee will be able to consider whether the registrar was well enough informed or gave accurate information, or whether it came from Argosy's solicitors and was not contested by the registrar.

Ms. Boothby: I do not think it is clear from the registrar's files whether it was part of the terms negotiated by the registrar and the AIL solicitor before the hearing.

Mr. Kerzner: From what I have seen, it is pretty clear that it is not a term of the agreement that was struck. When you read the CRAT order that will, hopefully, be duplicated and available by tomorrow morning, it appears to have been something that arose at the hearing where the consent terms were being presented to the tribunal for its approval.

Ms. Boothby: Yes, it has certainly been added by the tribunal because it appears on the face of the order.

Mr. Kerzner: But you have not been able to figure out what the source was and where the information came from?

Ms. Boothby: No, there is no indication.

Mr. Kerzner: Let us move on. The device of having a parent up above that takes money in from the public and a subsidiary down below that shovels it out by way of lending under mortgages, with neither of them therefore being subject to the Loan and Trust Corporations controls.

Based on your investigation, was that a device that was particularly innovative on Argosy's part or was this something that was well known in the industry in the late 1960s; that establishing such a corporate setup was a very useful device of being able to take money in from the public and then to lend out on security of mortgage and completely escape any Loan and Trust Corporations Act control?

Ms. Boothby: It certainly did not cause much alarm. It seemed to be a legitimate loophole, if you can describe it like that. No regulator I saw was concerned that this was a new way of going about things, an innovative scheme.

Ms. Morrison: And Argosy did put this right in its prospectus.

Ms. Boothby: Whether it was commonly used, I do not know.

Dr. Anisman: It is clearly permitted by the Business Corporations Act.

Ms. Boothby: Yes.

Mr. Kerzner: There is no question about that, but did it appear to

you, from your investigation, that the registrar was aware of (a) the device, and (b) what its purpose was?

Ms. Boothby: Yes. He knew from the 1969 investigation exactly what its purpose was, that it was set up in order to--

Mr. Kerzner: Did you find anything in your investigation that suggested the registrar had ever expressed any concern, either to his superiors or to whomever one can address those concerns, that this gap ought to be plugged?

Ms. Boothby: No, none at all.

Mr. Kerzner: I take it the Ombudsman would be prepared to accept that there are some questions that involve the exercise of judgement that are either unclear enough or contentious enough or debatable enough that if someone exercises his judgement and comes down on the incorrect side of the line, nevertheless that person, in doing so, is being neither unreasonable nor has he made a wrong decision in the sense that term is understood. I take it the Ombudsman accepts that proposition in the abstract.

Ms. Morrison: Yes.

Mr. Kerzner: Do you accept the proposition that in 1975, when the securities commission made its first decision that the mortgage syndications were not an investment contract for a security, that was one of those judgemental calls and that even though it was incorrect, you cannot say that in the making of the decision--not from the data one assembles in order to make it but in the exercise of the judgement--that was one of those either vague or hazy or contentious enough issues that reasonable people could disagree?

Dr. Anisman: The problem is that one cannot separate the data gathering from the decision. If one looked in a vacuum at the documents that were before the director when he made that decision, I think you could say they appear to be closer to the side of whole mortgages than of investment contracts, but I do not think that decision can be made without knowing the other kinds of information that are relevant to a determination of whether an instrument is an investment contract; for example, the manner of sale, the representations made, questions like that.

On the basis of the documents alone, the question is not one without doubt. It is one that is as close to the line as many of them are. If that were all the relevant material, one might call it a judgement call, but there was no further evidence gathered.

Mr. Kerzner: I am trying to understand whether your real thrust is that they did not get the facts together on which one could make an informed judgement, and I gather that is one point, but I am also trying to understand whether you also say that, with those facts, the matter was not judgemental enough anyway and that it only permitted of one reasonable or right decision.

Dr. Anisman: With only the facts that were available.

Mr. Kerzner: No. If one has gotten together the facts that you say they really should have gone out to get, do you say the decision that then has to be made, the judgement call, would itself be so clearly indicated as leading to only one result--that is, the finding that it is a security--and

that decision would not be in that reasonable area where reasonable people might differ?

Dr. Anisman: I am not fully sure exactly what representations were made by Mr. Carnie in 1975. If I assume that certain representations were made which are reflected in the later activities, I would say no. If I assume that all that would have been found is verification of the documentation before the director at that time, I would probably put it within the judgement call area at that time.

1620

Ms. Morrison: Could I just say, in terms of result, that the syndicated mortgages that were left at the collapse are all--I think I can say all; I certainly can say almost all--transactions which occurred at a much later date than this.

Mr. Kerzner: I am sorry. I do not follow your answer.

Dr. Anisman: I think what Ms. Morrison is doing is getting nervous about my previous statement.

Ms. Morrison: No, not at all.

Dr. Anisman: What I did was limit myself to your question and what I refrained from saying was that not only do I think that decision would not have been made had there been information that was available from the registrar of mortgage brokers, but also that I think it pretty clear at the time that the next complaint was made, which was 1977, the decision should have been otherwise. Then I do think that, had the information been available, it clearly was an investment contract which would not have been within the exemption for mortgages.

Mr. Kerzner: Because of the clear establishment of the criteria by the Supreme Court of Canada.

Dr. Anisman: No. Because of the clarity to me, as of that date, of the terms of the agreement and of the kinds of representations made and of the relationship between Argosy and the investors. I think, as of that date, it was clearly a security on the basis of judicial decision prior to the Supreme Court's decision in 1976 and that the Supreme Court's 1976 decision just put it beyond controversy in terms of the rules, but it still involves an application of the standards to the relationship. What I understand of the relationship then, I think, is clearly within the area of the investment contract.

Mr. Kerzner: Can we go to page 97 of the Ombudsman's report? You are here dealing with the series 1 debenture and the nature of the inadequacy of the review given to the second draft prospectus that was filed for the series 1 debenture.

While everyone concedes, it appears, that review was inadequate, I am trying to understand what difference a detailed review would have made. The explanation offered by the commission staff, according to page 97 of your report, is that it was not as carefully reviewed and no deficiencies were found, because Argosy had adequately responded to all of the deficiencies raised in connection with the initial filings.

You go on and say, "Nevertheless, the impression left with my investigators was that not all the deficiencies raised...had been resolved." You do not say that you find the deficiencies had not been resolved. You say that was your impression, which is a lot fuzzier. Can you tell us on what you base your conclusion or impression that the earlier deficiencies had not been resolved on the first go round on that prospectus?

Ms. Morrison: The usual way in which we can tell whether a deficiency has been resolved in the documentation that we looked at from the commission is that the deficiencies are listed--here we have a list, for this particular series, of 21 different points--and when they are met, they are ticked off at the side.

Mr. Kerzner: Is this in the Stransman material? Are you taking us to a document there?

Ms. Morrison: Yes.

Mr. Kerzner: Could you give us the page number? This will be in tab 16(b) of the black briefing binder. I see we are getting near our time. Is that something you need to keep looking for?

Ms. Morrison: No, it is pages 101 and 102 of your binder.

Mr. Kerzner: Yes?

Ms. Morrison: You will see the list of deficiencies begins at page 102 and it continues on up to number 21. Some of them are ticked off. Those are deficiencies which have been dealt with.

Mr. Kerzner: I see that 4(c) and (d) are not ticked.

Ms. Morrison: That is right, and if you go on quite a bit further you will see that 13, 14, 16, 17, 19 and 20 are not ticked.

Mr. Kerzner: Thank you very much, that is helpful. That is in the black briefing book at 16(b) in volume II, pages 102 and 106.

One last one before we adjourn for the day: on the same page 97, you go on and make the following statement, "The commission staff viewed the decision of the commission with respect to Carnie"--that is the decision with respect to his previous conviction--"as an indication that the prospectus should be approved." What do you base that conclusion on?

Is it an oral statement that some staff member made, because the decision clearly says nothing of the kind? If that is the view the staff took of it, then that may be another unreasonable decision that somebody makes, but I cannot find any reference in the written document.

Ms. Boothby: It is not in any documentation. That came out of the interviews that we conducted during the investigation. I am certainly not quoting words here, but I recollect being told there was a sense that once the matter had gone through this lengthy period of process of two hearings before the director and the commission, there was an atmosphere of approval.

Mr. Kerzner: Are you able to tell us who the people are who gave you

that impression? Do you have any notes of your investigation that you can consult overnight to give us some assistance?

Ms. Boothby: Yes, certainly I can have a look at my notes. The people I would have interviewed were the accountant and solicitor, both before the hearings and those involved after the hearings.

Mr. Kerzner: I would be grateful if you could look at those notes and tell us what you have in there, and from whom, that might have led to the impression you had that they thought the commission's decision with respect to Carnie was a green light and a stamp to get the prospectus issued.

Ms. Boothby: Certainly.

Mr. Kerzner: If that is a convenient place for the committee, Mr. Chairman, that is a convenient place for me.

Mr. Philip: Mr. Chairman, so that people will have some advance notice, I wonder if we can deal with my suggestion that on Thursday we meet at 9 a.m. rather than 10 a.m. and that we take a break of only one hour for lunch. This will allow some of the out-of-town members some flexibility.

Mr. McLean: Are we meeting Wednesday at nine o'clock?

Mr. Chairman: Yes.

Mr. Ashe: I have no problem personally, but it would appear that others do.

Mr. Hayes: I have a meeting Thursday morning and I will probably have trouble getting here for nine o'clock.

The committee adjourned at 4:28 p.m.

STANDING COMMITTEE ON THE OMBUDSMAN
ARGOSY FINANCIAL GROUP OF CANADA LTD.
TUESDAY, APRIL 14, 1987
Morning Sitting



STANDING COMMITTEE ON THE OMBUDSMAN

CHAIRMAN: McNeil, R. K. (Elgin PC)

VICE-CHAIRMAN: Sheppard, H. N. (Northumberland PC)

Bossy, M. L. (Chatham-Kent L)

Hayes, P. (Essex North NDP)

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McLean, A. K. (Simcoe East PC)

Morin, G. E., (Carleton East L)

Newman, B. (Windsor-Walkerville L)

Philip, E. T. (Etobicoke NDP)

Shymko, Y. R. (High Park-Swansea PC)

Substitutions:

Ashe, G. L. (Durham West PC) for Mr. Sheppard

Offer, S. (Mississauga North L) for Mr. Morin

Clerk: Decker, T.

Staff:

Kerzner, T., Legal Counsel; with Perry, Farley and Onyschuk

Evans, C. A., Research Officer, Legislative Research Service

Witnesses:

From the Office of the Ombudsman:

Morrison, G., Director, Investigations

Boothby, P., Assistant Director, Investigations

Anisman, Dr. P., Legal Counsel; with Goodman and Carr

From the Ministry of Consumer and Commercial Relations:

Bellmore, B. P., Legal Counsel; with Lockwood, Bellmore and Moore

Baskerville, J. E., Consultant; with Peat, Marwick, Mitchell and Co.

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON THE OMBUDSMAN

Tuesday, April 14, 1987

The committee met at 10:06 a.m. in room 151.

ARGOSY FINANCIAL GROUP OF CANADA LTD.
(continued)

Mr. Chairman: Ladies and gentlemen, now that we have a quorum, we will start our meeting and call on our counsel to continue his line of questioning with the Ombudsman.

Mr. Kerzner: Ms. Morrison, there were two things from yesterday that you wanted to think about overnight. The first was, if the committee determines that it should support the Ombudsman's recommendations, the criteria to be applied to exclude the non-arm's-length investors from the beneficiaries of compensation.

Ms. Morrison: I think there were three: the arm's-length investors; the rate of interest; and a question to our investigator concerning the investigation. Am I right?

Mr. Kerzner: I do not remember the third one, but tell me about the third one anyway if you think it is something outstanding.

Ms. Morrison: We will begin with the question of arm's-length transactions. Dr. Anisman will speak to that.

Dr. Anisman: Yesterday, I suggested a general principle to the effect that who we are looking to exclude, when we talk about excluding non-arm's-length investors, are people who clearly were involved in the fraudulent transactions or were sufficiently closely involved with the perpetrators of the fraud that they should not be entitled to recover.

On reflection, we have broken that down into four categories of people who would have to be reviewed by the receiver when awarding any compensation. They are (1) insiders, people involved in management of the corporations who clearly knew what was going on; (2) members of the families of those insiders who are sufficiently closely related to them that they cannot be severed from them, in effect; (3) persons who were acting together with Mr. Carnie or other members of management in related business ventures, which would indicate that they likely were aware of some of the fraudulent activity--there are a number of such persons identified in the appendices to the Lindquist Holmes report; and (4) anyone who actually knew of the fraud.

Mr. Ashe: How do you determine that last one?

Dr. Anisman: I do not think it is easy to determine. The reason it is is simply as a matter of general principle in terms of defining who is a non-arm's-length person. Someone who actually was aware of the fraud itself should not be entitled to recover. I expect that most of the people who would fit into that category--in fact, virtually all--would be encompassed in the first three categories, but the fourth is a general statement of principle. I take it that one could request a statement from people claiming that they were

not aware of the fraud. I do not mean to say that in a naïve fashion, but I do not think you could go much further than that.

Mr. Ashe: I think it sounds naïve, frankly.

Dr. Anisman: I thought you would, but it is a statement of general principle.

Mr. Ashe: What about employees who are not considered as owners or management in the sense that I think you mean it?

Dr. Anisman: Employees present a difficult problem because, if the employees were aware of the fraud, they should not recover, but it is just not clear that people in a nonmanagerial position would always be aware of the fraud. That is one of the reasons for the fourth category. We are not in a position to determine what, precisely, each employee would have known, if any invested, if there were any in the investment group.

Mr. Shymko: I understand this is where the contention is between yourself and the ministry, the proportion of people who are defined as being at non-arm's length and at arm's length. Do I understand that your figure for those whom you consider to be in a conflict situation and who are at non-arm's length is about 75 per cent, versus the ministry figure of something like 25 per cent? I recall that figure being mentioned.

Mr. Kerzner: I think what Mr Shymko is referring to is a position as of the end of last week on the percentage of mortgages lent by Argosy to borrowers. The Ombudsman people felt it was 75 per cent or more and the ministry people were telling us it was 25 per cent, based on Lindquist Holmes.

Mr. Shymko: That is in syndicated mortgages.

Mr. Kerzner: That is correct, but I think what the people are now addressing is the question of the victims and the compensation to the victims. They exclude from that people, even though they invested, who were related. They were trying to get the criteria established to catch somebody as being an excluded beneficiary of compensation.

Mr. Shymko: Would you see a relative agreement from the ministry on your categorizing of these four individuals?

Mr. Kerzner: I do not think it is something that was discussed with the ministry.

Mr. Shymko: That is not a contentious issue.

Mr. Kerzner: I do not think it would be a contentious issue, but the ministry can answer that.

Ms. Morrison: The second question from yesterday was the question of the rate of interest. The Ombudsman was asked to recommend to the committee a rate of interest that he thought was appropriate in the circumstances. The Ombudsman has asked me to advise the committee that he feels that the average Bank of Canada rate of interest over the period in question, which is 12.07 per cent, would be an appropriate rate, and he feels it ought to be compounded on an annual basis.

Mr. Kerzner: As a general rule, I take it that the average Bank of

Canada rate is a little bit higher than what you could get if you put your money into one-year term deposits or guaranteed investment certificates.

Ms. Morrison: That would depend a bit on what the interest market is doing.

Mr. Kerzner: As a general rule, that rate would be somewhere between the Bank of Canada average rate and the nonchequing savings account rate. Would you not agree that after this terrible experience, most of these people, if they had been paid in 1981, would probably have gone to one of the major banks and probably bought only a safe investment with the money, something along the lines of one-year, two-year or three-year GICs?

Ms. Morrison: Yes.

Mr. Kerzner: Okay. What about your third item?

Ms. Morrison: The third question related to page 97 of the Ombudsman's report, to the statement that was made in the report, which begins almost at the end of that page, "but that the commission's staff viewed the decision of the commission with respect to Carnie as an indication that the prospectus should be approved." In other words, it was a question about how we had the impression from the staff who were interviewed that, once the commission had reviewed this matter, they should approve the prospectus. Ms. Boothby has checked into that.

Ms. Boothby: I have checked my interview memos. I conducted three interviews on this particular point. One was with the accountant who worked on the two filings before the hearing and after the hearing and the other two were two solicitors, a prospectus solicitor who worked on the filing before the hearing and a prospectus solicitor who worked on the filing after the hearing. The prospectus accountant made no comment on this point.

The prospectus solicitor who worked on the prospectus after the hearing said he did not feel it was open to him, after an Ontario Securities Commission hearing and registration, to slow up the process with new questions and demands on the filing. The prospectus solicitor who worked on the filing before the hearing commented about the decision, that it spoke to the criminal conviction only. But it gave a very strong signal to the prospectus staff to approve the issue, and the staff found it harder to recommend that the issue not be approved.

Mr. Kerzner: To give the ministry a fair chance to check that out, do you have the names of the two solicitors so that they will know whom they should speak to if they want to present anything different?

Ms. Boothby: Yes, we can provide them, certainly.

Mr. Kerzner: You made reference, Ms. Morrison, in your submissions to a number of new complaints that came in during the probationary period following the Commercial Registration Appeal Tribunal decision in December 1973. Do you agree, however, that those complaints refer to conduct by Argosy that took place prior to that decision being made?

Ms. Morrison: I think that all of them in our information do. My point about referring to the complaints coming in was that this would draw the matter to the registrar's attention rather than if the conduct complained of had arisen after the decision.

Mr. Kerzner: What would it draw to the registrar's attention? If it was more of the same sort of thing that he had already, hopefully, managed to outlaw by the CRAT decision in 1973, what good would it do him to get Argosy in and chastise it for the kind of conduct that occurred prior to that CRAT decision?

Ms. Morrison: I think our view of the registrar's regulation of Argosy overall is that Argosy was brought to the registrar's attention on many occasions and that the registrar's staff had serious concerns, notwithstanding the fact that there had been a probationary registration. It seems to us that the complaints, from whatever time they arose, might have led to the checking of whether the conditions that were set out in the probationary registration were being met.

Mr. Kerzner: But you say it was unreasonable for the registrar, when he got a complaint in 1974 about conduct in 1972 of the very type that the 1973 decision dealt with, to say: "There is no point in checking this one out because this is the kind of thing we know was going on and the kind of thing the 1973 order was designed to stop. Why bother checking? It is not as if it shows a failure to follow the 1973 order."

Ms. Morrison: Ms. Boothby just has one correction here.

Ms. Boothby: I have not got the details right at my fingertips, but there certainly were complaints that arose after the CRAT hearing during the probationary 18-month period, complaints about mortgages entered into after the probationary period.

Mr. Kerzner: If you can draw our attention to where that is in the material, it would be very helpful. There is no question--and we will come to it when we deal with the ministry--that the registrar was advised after December 1973 that John David Carnie was still playing a role in Argosy, but that is a different issue. If you can find it, when you have managed to find it, let us know where we can find it.

1020

Ms. Boothby: Sure.

Mr. Kerzner: I just have a couple more, if you will let me check my notes.

Ms. Morrison, you made a submission with respect to the Ontario Securities Commission and its decision that the sale of the interest in the syndicated mortgages was not an investment contract. Your first ground was that the director made that decision without obtaining a formal legal opinion. Do I take it that the Ombudsman's criticism is directed at the fact that the opinion was not reduced to either a letter or memorandum? Is that what you are pointing at?

Dr. Anisman: No, I do not think it is. That relates to the criticism, if you will, that there was not a further investigation to discover the circumstances in which the instruments were sold in order to determine all the factors, all of the facts that are relevant to a determination of whether it was an investment contract or not. I take it that a formal legal opinion would have involved more effort on the part of the lawyer preparing it.

As I understand the facts to have been, the conclusion was based on a

discussion with two lawyers within the commission. It is not clear what they reviewed beyond the documents. There is no indication they reviewed anything beyond the documents and the notes of the interview with the person who had sent out the original letter. An opinion would have involved their looking into all the criteria and not just quickly making a determination on the written material before them.

Mr. Kerzner: If they had done that and had an oral discussion or a corridor chat with the director, you would not be complaining.

Dr. Anisman: If they had done that and come to that conclusion, depending on the facts that they had found, we might not be complaining.

Mr. McLean: There might not have been a problem either.

Dr. Anisman: That is possible. The only other fact that I would mention--and it is not directly related to Mr. Kerzner's question--is the fact that they did not have the information that the registrar of mortgage brokers had at that time, which also would have been relevant to their determination.

Mr. Kerzner: You also drew our attention to a comment that you say one of the OSC staff members either noted on a memorandum or sent in a separate memorandum. According to my notes, it said something to the effect of, "Watch out for this guy next time." Can you tell us where we can find in the material the reference to which you were referring? It was something about "Argosy again" or "Watch out."

Ms. Morrison: There were two separate ones. The "Argosy again" note was a handwritten note on the bottom of one of the memoranda noting that the staff had followed up on an advertisement in the Globe and Mail selling syndicated mortgages.

Mr. Kerzner: Is that in the Stransman material? If it is, can you give us a page reference?

Ms. Morrison: I do not believe it is in that material.

Mr. Kerzner: Is it in any of the material that you have presented?

Ms. Morrison: Have we a copy of it in our office? We could get a copy of that for you.

Mr. Kerzner: And the other one about watching out for this guy the next time?

Ms. Morrison: That is noted in our report. It is at the end of the series I debentures, right?

Mr. Kerzner: It is not, apparently. They are going to get it for us.

Ms. Morrison: I was referring to page 54 and I was paraphrasing. It is the note per the deputy director, which was made on the file cover once the prospectus series had been approved. It says: "Note: If this company refiles, we should require reasonable limit on leverage and some sort of security on debt. Consider labelling 'speculative'." This had nothing really to do with the review; it was a note by the prospectus accountant made once the series had been approved.

Mr. Ashe: I am not quite sure that is the same thing as saying,

"Watch this guy next time." That has a little different connotation. I think that is a normal type of prudent note that anybody might put on that kind of a file, frankly. It could vary in terms of the time frame, "If they come at it soon, we better look again."

Ms. Morrison: Exactly. I think we raised it just to note that the approval of the debentures was not without difficulty for these people. There was some question about it. Once it was approved, the prospectus accountant felt obliged to put his own note on the file saying, "I think there might be a problem here."

Dr. Anisman: But it was close to saying, "Watch this guy next time," not in terms of reconsidering the reasonable limit on leverage, which would be a normal substantive requirement, but the last sentence--"Consider labelling 'speculative'"--suggests that it is an issue about which the person writing the note had some suspicion. The word "speculative" indicates something about the nature of the investment. It does not necessarily indicate, "This is a fraud artist," but it does indicate they think it is a risky investment that might require a "speculative" label on the prospectus.

Mr. Kerzner: There are just two more. On pages 71 and 72 of your report, you drew our attention to some comments Ontario Securities Commission staff had made about Argosy being in a great deal of trouble, or having personal reservations about approving the prospectus. Are those notations contained on documents in the Stransman report? If they are, could we have the page references? If they are not, could we have the documents in which the comments are made?

Ms. Morrison: Yes. I think the comment on page 71 by the prospectus accountant on a memorandum dated November 14, "Argosy is a finance company that appears to be in a great deal of trouble," is in the documents. Am I right, Ms. Boothby?

Ms. Boothby: I am not sure.

Ms. Morrison: We will check, and if they are not here, we will certainly provide you with that. Ms. Boothby has just reminded me to state, just for the record, that we do not usually produce our files to the committee. We do produce the results of our investigation and we are certainly willing to produce what documentation we have.

Mr. Kerzner: But these are documents, presumably, that were in the hands of the securities commission, which is one of the governmental organizations. If you want to suggest that is what they said and those are the reservations they had, it is helpful if we have the actual document.

Ms. Morrison: We will produce it.

Mr. Offer: I believe we have been informed you might be able to find that document in the documents that were presented by the ministry yesterday. Is that right?

Interjections.

Ms. Morrison: We will certainly find them.

Mr. Kerzner: Would you tell us where they are and give us the page references so we will have them when the committee comes to deliberate.

The last item: To what extent did the registered retirement savings plan investors get any of the prospectuses for either the series I or the series II debentures? You told us yesterday that some \$300,000 of the \$4 million acquired through the RRSPs was used to purchase or to be invested in one or both of the two debenture issues?

Dr. Anisman: We had no indication the RRSP investors received any of the prospectuses.

Interjection: They might well have done.

Dr. Anisman: It is possible that some of them could have independently found them and read them, but they did not have to be distributed to them.

Mr. Kerzner: I take it that for someone purchasing the \$5,500 that year for his RRSP, it was not a requirement to provide him with a prospectus as it would be if he were a direct purchaser of a debenture.

Dr. Anisman: That is right; it was not a requirement.

Mr. Kerzner: Thank you. Those are the questions I have.

Mr. Shymko: I want to ask a few general questions before we proceed with the ministry's presentation. I have a problem in figuring out the impact of regulatory failure. I think you addressed this issue yesterday before we adjourned. It is my understanding from your presentation that, essentially, the losses by the investors were caused by a variety of regulatory failures. You attribute some of these regulatory failures to two government agencies, the registrar and the commission.

I have a brief, nine-page synopsis with a six-page conclusion on the Ombudsman's letterhead. I went over this yesterday and I want to ask you some questions in terms of what was said.

On page 3, the Ombudsman says "one of the major regulatory gaps in the process was the lack of an established system to ensure the communication...." Recommendation 3 at the end of the report addresses that, within the two organizations, in a major way. Here it says that the "regulatory failure is less attributable to the individual organizations involved than to a systemic breakdown and a lack of government direction."

1030

When you say this "regulatory failure is less attributable to the individual organizations involved"--the two agencies; I look at paragraph 2 of this synopsis on page 3--"than to a systematic breakdown and lack of government direction," since there had been a vacuum in terms of communications in terms of even the need for amendments to the Securities Act and other things, and a very important recommendation, number 3, that addresses the whole issue of that lack of communication, I have a problem in saying that the onus and the fault is on those two agencies if in fact a vacuum existed that has to be rectified today and that to this day has not

been rectified. In other words, you may have another Argosy problem even today if the status quo remains.

My question is, can this fraud happen again today unless some changes are made in terms of the recommendations of the Ombudsman, unless some amendments to the Securities Act and the Mortgage Brokers Act and so on are implemented?

Ms. Morrison: Certainly it was one of the Ombudsman's most serious concerns that there were systematic problems here, which is why many of our recommendations--indeed five of our six recommendations--deal with those problems. We understand from the ministry that it does not disagree with those recommendations and that it intends to make some changes in line with those recommendations.

Mr. Shymko: When the securities commission complains, "We do not have the staff and we do not have the money," or "We did not have the staff and we did not have the money to investigate adequately," I guess the blame is on the government. They should have provided the staff and all the facilities and there should have been in place a system of communication, exchange and verification and so on. This is why we say, "Compensate; the onus is on you." But this cannot be done unless you have some changes. This is my dilemma in assessing those factors.

Dr. Anisman: I think the point of that recommendation was that there were three contributing causes to the failure of communication between the agencies. One was the failure of the regulatory bodies themselves in that the registrar of mortgage brokers did not pass information to the commission and the commission did not seek information from the registrar. To do either of those things would not have required a great increase in staff.

The point you raised is the third criticism; that is, there was no requirement imposed on agencies that had overlapping regulatory regimes to have systems for communication, to establish them. The requirement to do that does go beyond the individual agencies themselves and goes to the government, although I take it that the agencies could have established them on their own and that individual people within the agencies could have contacted those within the others.

Mr. Shymko: But to be very simple, you do in fact accuse the commission and the government of maladministration, do you not?

Dr. Anisman: I think that is right.

Mr. Shymko: And the reason you are accusing them of maladministration is that they failed to establish procedures or that they failed to implement procedures that were in place. That is my dilemma.

Dr. Anisman: No, it is that they failed to establish procedures to ensure that information was transmitted between them with respect to overlapping regulatory matters.

Mr. Shymko: So there were no procedures in place--

Dr. Anisman: Not that we discovered.

Mr. Shymko: --that they could in fact implement and that could verge

in the area of policy decisions by the government? Is there an area of policy or is there just a matter of--

Dr. Anisman: I am not--

Mr. Shymko: If you look at the very first recommendation of the Ombudsman in terms of the Securities Act, it says, "The ministry...should undertake to review...the Securities Act and the policies formulated under it...in connection with its administration." This is why I am asking about policies.

Dr. Anisman: I see. The policies referred to in that recommendation relate to published policies governing the conduct of specific types of investment that the commission adopts with respect to its regulatory powers in its administration. I should think that with respect to some of those policies--for example, a syndicated mortgage policy, if there were one--there should be communications between the commission and the registrar of mortgage brokers.

Mr. Shymko: You further say that there were some powers already on the books that were available to the commission, outside of this maladministration area where there were vacuums, but you also state that there were policies and powers in place, particularly investigative powers, that you say failed implemented although circumstances indicated that they should have been used. Because of that, my understanding is that you conclude in the second point that the commission and the government were not only unreasonable, but I think you say, wrong in law and in fact? In other words, they were wrong.

Dr. Anisman: There are a number of points.

Mr. Shymko: I just want to understand what the word "wrong" means.

Dr. Anisman: I think what you are referring to is the conclusion about the syndicated mortgage interests. When the Ombudsman concluded that there was an error, that it was wrong, what that reference is to--

Mr. Shymko: That is the conclusion, wrong in law.

Dr. Anisman: --is the conclusion that the syndicated mortgage interests were not securities. That was in our view wrong in law. That is a conclusion Mr. Stransman agreed with in his study on behalf of the commission. There are a number of other points where the commission--

Mr. Shymko: Can I clarify that? When you say they were wrong in law on that securities thing, do you refer to the 1976 Supreme Court decision on that specific point or whatever securities was aware on the whole question of the nature of--

Dr. Anisman: I do take into account the 1976 decision, but no, I do not take it into account with respect to the decisions made prior to it. When I say "wrong in law," I mean that the conclusion in the light of all the facts we now know was wrong. The syndicated mortgage interests were securities and that is true in the light of the judicial decisions before and after the Supreme Court decision. It is also clear on a simple reading of the act because it is clear that even mortgages, within the Securities Act, are

securities and therefore syndicated mortgage interests are necessarily securities.

Mr. Shymko: Are you then saying wrong in law, they broke the law?

Dr. Anisman: No, I am saying it was an incorrect application of legal principles to the facts that existed.

Mr. Shymko: They circumvented the law?

Dr. Anisman: You say "they" circumvented the law.

Mr. Shymko: I mean agencies knew the law was there. They went around it.

Dr. Anisman: No, we are not suggesting there was any bad faith or any attempt to ignore the law. What we are saying is that the application of the legal principles to the facts to determine whether the investment vehicles in question were securities was an incorrect application of those principles.

Mr. Shymko: Application of legal principles; I like that. I am still confused, but it sounds great.

Ms. Morrison: The very simple fact that we are talking about here is whether or not the securities commission regulated the syndicated mortgages. The word "wrong" we use is applied to say that they made the wrong decision about whether they were going to regulate them or not. Had they decided they were securities, they would have regulated them. They decided they were not securities so they did not regulate them. That was wrong. That is what we are saying.

Mr. Shymko: Is human imperfection part of that?

Ms. Morrison: It was a legal opinion that they sought about whether or not they should regulate these things. They looked at their own act. They looked at what these syndicated mortgages were.

Mr. Shymko: It is not a human error.

Ms. Morrison: It was a legal opinion.

Mr. Shymko: Okay.

Dr. Anisman: I think the question of human error goes to the question of the application of judgement and that was responded to yesterday. The criticism by the Ombudsman is not only that it was wrong--that is not all the Ombudsman's recommendation flows from--but also that steps were not taken to determine the facts that would have enabled it to be right, which is something beyond simply an application of judgement. The first premise that it was wrong is the one that involves some judgement, certainly in the early years. The second question of the failure to investigate to find full facts and the failure to consult with the registrar of mortgage brokers to find out information about it or the failure of the registrar to pass on information that would have been relevant is not within what one would call the human error category.

Mr. Philip: May I just--

Mr. Shymko: These are philosophical questions from philosophy 102, 103 and 104, Mr. Philip. I have completed my questioning.

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Mr. Offer: On a philosophical basis, do you view regulatory failure, regulatory breakdown, in the same light as where there are regulations in place that are not followed as opposed to the time where there are no regulations in place so there is nothing to follow? In both instances, in your opinion, is that regulatory failure or breakdown?

Dr. Anisman: It may be. I do not mean to evade that. In both instances, in this case, the answer is yes, in that the failure to put into place mechanisms to ensure that information is passed between regulators with overlapping regulatory powers is a regulatory failure. The failure to take actual steps to determine what information exists is another form of regulatory failure.

Mr. Offer: The reason I asked is that I think, in many people's minds, there is a clear distinction where there are regulations in place which, for reasons, are not followed as opposed to a situation where there are no regulations in place so there is nothing to follow. Many people might say of the former that there may be regulatory failure or breakdown, but in the latter case, because there is nothing to follow, there cannot be a breakdown of that which does not exist. Maybe it ought to exist, but certainly, one cannot erode something that does not exist.

Ms. Morrison: Maybe I can speak briefly to this, Mr. Offer. This is a problem that arises often in the Ombudsman's office. We could not let government organizations get away with the excuse that there were not any rules for them to follow if a wrong was clearly done. Otherwise, the easy way out is never to make any rules because then you cannot be found not to be following them.

The Ombudsman Act allows the Ombudsman to find that there has been an omission. It is not only designed to look to see whether ministries are following regulations, but it also designed in much broader terms than that to review governmental action of all kinds. We certainly do not feel, in the Ombudsman's office, that the only kind of conclusion the Ombudsman can make is that the government did not follow a regulation. That would be a very narrow interpretation of our act.

Mr. Offer: I understand that. I am just saying that there is a distinction in the minds of many people. When one characterizes something as regulatory failure or regulatory breakdown, there is a distinction in many people's minds as to that type of instance where there are or are not regulations in place. I understand you did not make that distinction but I question whether that distinction ought to be made.

Dr. Anisman: In responding to your question, the reason I hesitated at first is that I think the answer to it very frequently depends on the facts of the case with which you are dealing. I do think we make that distinction. We recognize that there is more than one type of regulatory failure possible.

What I think you have done is to describe two possible types. One type is the failure to adopt practices or policies that are necessary in the circumstances and which, in a given context, result in what could be characterized as a regulatory failure. Another would be to fail to follow

procedures that have already been adopted. Both can constitute regulatory failure in a given circumstance.

Mr. Offer: Thank you. I have one further question with respect to the question of wrong in law with respect to the syndicated mortgages, whether they are securities. In response to a question that was asked by counsel yesterday on this very point, I think it was phrased in the abstract, whether there is a discretion, whether there is the possibility that one can decide whether a syndicated mortgage, based on a number of elements, becomes a security or, in the abstract, can be a yes-or-no situation.

With respect to the characterization of wrong in law, the distinction seems to be that where the decision was that a syndicated mortgage is a security but was not afforded the same types of investigations under that characterization, then it is wrong in law. But is there a distinction where people make a decision based on the facts before them as to whether that particular instrument is a security, when they are just exercising a discretion they have? In your opinion, is that properly characterized as something that has been wrong in law, when they are exercising and abiding by the mandate for which they have been created?

Dr. Anisman: I think it is possible to have the kind of decision you have described, a decision involving judgement as to the character of a particular investment instrument. It is possible to have that exercise of judgement and still be wrong in law. That is one of the reasons we have appellate tribunals, to determine questions like that.

The question you are asking is whether there are areas, and this was Mr. Kerzner's question yesterday, which permit the legitimate exercise of judgement within parameters as to whether something is a security or not. My response to that was, yes, there are those areas.

The conclusion in the Ombudsman's report is based on a number of factors that led him to conclude that the particular decision in question, the particular exercise in judgement, was wrong in law. One was that the decision concluded that the instruments were not securities. What that conclusion means to a securities lawyer is that the instruments are simply not subject to the Securities Act at all, because it only applies to securities.

It is clear under the act that they were securities, clear because the act does apply to mortgages, home mortgages for example. That decision, as framed, was wrong in law, but the things that flow from that are that in order to determine it, adequate steps were not taken to find out the facts that could have made a correct decision possible.

That is my first response. There are other levels to the question. Yesterday, we mentioned the facts that we clearly know, as of 1977, after which most of the syndicated mortgages involved, if not all, were sold. At that time, what I said is that the facts, as I understood them to be as of that date, indicated clearly that any judgement that the investment vehicles, the syndicated mortgage interests sold by Argosy, were not securities would be clearly incorrect even on an investment contract analysis, on the analysis of the courts.

What I am saying is, "Yes, there are judgements, but judgements can be wrong in some cases." But the basis of the Ombudsman's decision goes beyond that. It starts from the fact they were wrong, which was admitted I think, and then proceeds to what steps were not taken that could have made them right. Does that answer the question?

Mr. Philip: My supplementary stems from your comments about the failure to investigate when an investigation was warranted. I want to relate that to Ms. Morrison's statement yesterday, when she was dealing with the question of why only 50 per cent. She answered that a fraud was perpetrated, that it was perpetrated not only on the investors but also on the securities commission and the registrar of mortgage brokers.

Would you agree that both the Mortgage Brokers Act and the Securities Act establish not only a quasi-judicial body or a judicial-like body, as would be the case of, say, the Ontario Highway Transport Board, but go further than that in having an investigatory role and, therefore, the moment something warranting an investigation is not followed they are in breach of their own act?

Very specifically, I want to read to you the mortgage brokers section that, it seems to me, is relevant. That is subsection 23(2):

"Where the registrar has reasonable and probable grounds to believe that any person is acting as a mortgage broker while unregistered, the registrar or any person designated by him in writing may at any reasonable time enter upon such person's business premises to make an inspection for the purpose of determining whether or not the person is in contravention of section 4."

1050

Section 24 backs it up. Would you agree--and needless to say, I will be asking the same question of the government--that there is a direct contravention, at least, of subsection 23(2) of the act?

Dr. Anisman: Let me look at subsection 23(2) of the act.

Mr. Philip: Unfortunately, I have the new Securities Act and not the old Securities Act, because I am sure I could produce something similar from there.

Mr. Bellmore: This is the Mortgage Brokers Act.

Dr. Anisman: Yes. I will come to the Securities Act as well.

Mr. Philip: I said that. I said I did not have the old Securities Act under which you were operating at that time, and I was quoting from the Mortgage Brokers Act.

Dr. Anisman: The investigative powers in the current Securities Act are substantially the same as the ones that were in the past Securities Act. With respect to them and to the registrar's powers of inspection under section 23, they give the regulatory authorities a power of investigation.

Mr. Shymko: Hold it. Could you qualify that? The registrar has no power to investigate, according to the suggestions by the Ombudsman that the Mortgage Brokers Act should be amended to give it that power. You are talking about the securities commission and not the registrar.

Dr. Anisman: No. Section 23 of the Mortgage Brokers Act, which was just read from, gives the registrar or a person designated by him a power to inspect the business premises of a person registered as a mortgage broker under the act.

Mr. Shymko: Why then would the Ombudsman recommend that the act be amended to make clear that the registrar is entitled to investigate on his own initiative?

Dr. Anisman: As I recall, it was because there was some question in the registrar's office of whether the registrar had an independent power to investigate without having received a formal complaint.

Mr. Shymko: So that is the distinction between independent power and whatever power is in the act.

Ms. Morrison: "On his own initiative" were the words used.

Mr. Shymko: I see. Thank you.

Dr. Anisman: What I might point out and what Ms. Morrison has just drawn to my attention is that there are two investigative powers in the Mortgage Brokers Act. The one that was just read has to do with inspection of the premises of people who are registered. There is another power that enables the minister to appoint a person to make an investigation, but it is not limited to complaint either.

In short, I think the recommendation in the Ombudsman's report was to clarify for the registrar that he had independent powers of investigation and to ensure that--

Mr. Shymko: Which he does not have now.

Dr. Anisman: I cannot say that on reading section 23.

Mr. Shymko: I thought there was enough research by the Ombudsman's office to lead to that recommendation, which leads you to believe that he does not have any independent powers. That is why recommendation 2 is in place.

Mr. Kerzner: In due course we will hear from the ministry people, and that is certainly one of the questions I propose to ask of them. My reading of sections 22 and 23 of the act, which were there as early as 1970 and maybe earlier, seem to me to give the registrar enough power, without any statutory amendment, to go out and check the sorts of the things that were popping up in connection with Argosy.

Dr. Anisman: I think that is correct.

Mr. Kerzner: If he felt hamstrung, he probably could have, as well, gone to the minister to get a minister's order under section 25. I do not know what is the rationale behind the Ombudsman's recommendation--

Mr. Shymko: That was my question, basically.

Mr. Kerzner: --but one of my questions of the ministry is going to be that it appeared the registrar had the power to do what he needed to do anyway.

Mr. Philip: I have one last question on investigation. The Ministry of Consumer and Commercial Relations makes the argument that the regulatory standard which the Ombudsman has applied in assessing the conduct of the ministry staff was unrealistic inasmuch as, if adopted, it could make the government the guarantor of investments. Would you agree that the major focus

of your attack or of your criticism, if you want, was on the failure to investigate, that information was available and they failed to investigate? Had they investigated and had they come to the wrong conclusions, your case would be an awful lot weaker.

In fact, what you are saying is not that the government has the right, even in this instance, to protect the investors but that it has the obligation under the act to take every possible investigatory step when there is evidence that says there may be a problem. Its failure to do so is where it has committed a major sin of omission and, therefore, it is liable to the investors. If it had investigated and made judgement errors, then it probably would not be, but because it did not investigate adequately, it is responsible.

If one accepts that premise as being your thrust, would you not agree, then, that the statement by the ministry that somehow we are saying the government is responsible for all investments is absolutely ridiculous? I guess you would be foolish not to say yes, but--

Dr. Anisman: Yes. I think you have characterized admirably the major element of the Ombudsman's recommendation. It is that, when the agencies had information, they failed to pass it on to each other and that when they had clear indications that an investigation was needed, they did not exercise their investigatory powers. In those circumstances, there is a clear standard that is understandable, and it is not a guarantee of any sort at all.

Mr. Philip: You are the best witness I have ever led into an answer.

Dr. Anisman: You are the best questioner I have ever had.

Mr. Ashe: Mr. Chairman, seeing that there seems to be a new venue of trying to lead people, I have to go back now. We have gone that route, which I think was unfortunate.

Frankly, I agree with the second part of your argument--

Mr. Philip: It is unfortunate (inaudible) information, Mr. Ashe.

Mr. Ashe: Nobody asked your opinion. I did not interrupt you even though I wanted to many times. I bit my tongue. So, in the meantime, you can just shut up and let somebody else have a chance.

Mr. Chairman: Order.

Mr. Ashe: I really respect and go along with the second part of your argument better than the first. That is why I want to go back to the first--I was prepared to leave it until we got into the second--and that is the one saying very definitively that the ministry, in effect through the registrar of mortgage brokers, made the wrong decision vis-à-vis the securities. You are very definite on that, I think much more so than what is contained in the report.

I want to draw your attention back to the many issues that seem to conclude--even Mr. Stransman who said in his report, "I probably would have come to a different decision, but considering the rules, the regulations and the law as it was then, I think they took enough consideration and investigation and I do not challenge their conclusion either."

It is unfortunate that you have now made it much more definitive that

they were definitely wrong rather than that they made a wrong choice, in your view. There is no problem with that. I think there is a distinct difference in that route. Again, I draw your attention, just as a reference, to section 19 of our little mini-binder here.

In the middle of page 6, it says: "After an exhaustive 70-page opinion on the definition of a security, Stransman concluded that it was reasonable for OSC staff to conclude that the syndications were not securities. Moreover, Stransman also concluded that the OSC made 'a sufficient investigation of the matter.' These findings were made notwithstanding the fact that Stransman expressed the opinion that on the state of the law at that time he might well have found that the sale of the syndications were, in fact, the sale of a security."

I thought that was the route you were going yesterday, that you could ask 10 people who were deemed to be qualified and you might get five and five, but now I think you are saying you are at least 10 to zero. I think it should be clarified where you really sit on that issue. When I say "you," I mean the Ombudsman obviously.

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Dr. Anisman: What I think was said yesterday was that with respect to the early part, in 1975, there was a judgement call as to whether or not this was a security. What I said today, and I was not addressing the same question, was that it is clearly a security. It is clearly a security because a mortgage is clearly a security under the Securities Act. A mortgage is clearly a security under the Securities Act because there is an exemption under the act to permit transactions in mortgages by people registered under the Mortgage Brokers Act.

The question of investment contracts, in other words, the question of whether these are securities as opposed to mortgages or the question of whether it is an investment contract as opposed to a mortgage, may be confused. When I say there was a decision that this was not a security, concluding that it was not a security means that the act does not apply at all. Concluding that it was a security leads you to question whether it was an exempt security. That question leads one to the question of whether it was a mortgage or something other than a mortgage, namely, an investment contract.

By the way, that is the analysis that the commission has applied to this area in its own decisions over the years, including Greymac, the one in the materials handed to you yesterday morning. The question of whether it is an investment contract is a question involving judgement. When I said this morning that it was clearly a security, what I meant was that mortgages are securities and it was clear that the syndicated mortgages were securities within the act. That was the question that seems to have been addressed in the materials the Ombudsman had. The conclusion that they were not securities meant that the act did not apply at all.

The proper question was, were they investment contracts which would have resulted in their not being within the exemption for mortgages? That is the question that involves judgement. When I am very clear about whether they were securities, I am referring to the structure of the act.

With respect to the judgemental question, my response is exactly what it was yesterday. There simply were not enough steps taken to discover what the true facts were so that a judgement could be made in 1975, in that there were

not steps taken to determine how these instruments were actually sold and what representations were made to investors.

I also said that if one looks at the documentation, at least the documentation I have seen as of 1977, it was clear that any judgement that they were not securities would have been incorrect. That was a point of which the commission did not make any further investigations, even though there were subsequent complaints. It is at that time that Mr. Stransman agrees that they were clearly securities, in his judgement. That is a time as well, after the period, when Mr. Stransman says the law was in flux. That was after the Supreme Court's decision.

Mr. Kerzner: If I could, I will run through the lineup for the ministry so that everybody will know what is coming. There is--and if it has not been distributed perhaps Mr. Decker could do so--a three-and-a-quarter page aide-mémoire that outlines in point form the position of the ministry that will be developed over the next two days.

In terms of the people we will hear from, it is proposed that after everyone has had a chance to look at the outline, we will first hear from Mr. Baskerville who works with the Lindquist Holmes people, who is going to try to take the committee through how the frauds were accomplished, how Argosy did some of its business and some other accounting and numbers matters. For that purpose he has an overhead slide projector set up, and he will probably have some things to show us on the screen.

Following his presentation, the usual questions can be asked, and we hope we can then dispose of him. Following him will come Mr. Mitchell, who is the current registrar of mortgage brokers, and Mr. Stanley Beck, who is the current chairman of the Ontario Securities Commission.

Might I suggest, although it is a great temptation to jump in with questions as we all go, I had intended to let both Mr. Mitchell and Mr. Beck complete their presentations before I had any questions of either. Although they represent separate governmental organizations, there is a certain amount of overlap, certainly in terms of the Ombudsman's recommendations, and I think it makes more sense to hear from both of them before we start questioning either of them.

Mr. Mancini: I do not agree with you. We have your views.

Mr. Kerzner: You have my view of the lineup.

Mr. Bellmore, who is here this morning, is one of the counsel for the ministry. He may want to take us through the outline of the ministry's position first.

Mr. Bellmore: Thank you, Mr. Kerzner. I do not want to tax members' patience, so what I have tried to do is to put in a summary, point-form manner an outline of the ministry's position, which will be fleshed out, of course, in the course of the evidence you will hear from Mr. Baskerville, who was the forensic accounting expert the Attorney General retained after Argosy collapsed to assist the Ontario Provincial Police anti-racket squad in its investigation.

As Mr. Kerzner has mentioned, you will also be hearing from Mr. Beck, who is the chairman of the Ontario Securities Commission at this time and has been chairman for some two years past. As well, you will hear from Charles

Salter, who was the director of the commission at the material time. Those gentlemen will be dealing specifically with the question of whether the syndicated mortgage investments for which there is a \$21-million claim for compensation were or were not legally within the ambit of the Securities Act at the material time. On that point, I draw to your attention a very serious point of departure between the ministry and the Ombudsman.

Perhaps we could take a moment and, rather than read this to the committee, they may want to read it themselves.

Mr. Kerzner: I do not mean to interrupt, but I did not hear you mention anything about anybody from the registrar of mortgage brokers' office.

Mr. Bellmore: As Mr. Kerzner indicated, David Mitchell, the current registrar, is with us this morning, and you will be hearing from him immediately following Mr. Baskerville.

Mr. Kerzner: As long as we have someone from that office to whom we can talk.

Mr. Bellmore: Yes. He will be prepared to deal with the matter as far as the registrar is concerned.

I was going to suggest that, rather than my reading this aloud to the committee, members take a moment to read it. While they are doing that, perhaps Mr. Baskerville could get his material set up for his overhead presentation.

Mr. Mancini: --my views on the presentation of this matter, these four sheets of paper here that we have been given today.

Mr. Ashe: Speak up.

Mr. Mancini: It is my understanding that this committee is dealing with a very important matter which may or may not lead the government to compensate investors to the tune of many millions of dollars. We have only a limited number of days for these very important hearings, and I do not know how other members of the committee feel, but when I have documentation put in front of me a few minutes before we are supposed to hear witnesses and then it is suggested to us that while the slide show is being prepared we take a few moments to look at it and see if we have any questions, to me, that is not an acceptable way of presenting evidence to the committee.

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We dealt with this matter--as you know I sit on the Legislative Assembly committee, where we deal with a lot of procedural matters and the members of the Legislative Assembly committee felt that when things like this happen, the information should be put forward to the next day.

Now, I am not suggesting that we do that today, but the only thing I would suggest to you, Mr. Chairman, with the co-operation of all involved is that, if we are going to look at important information which is going to deal directly with the presentations being made to this committee, there should be some courtesy involved and it should be given to us at least an evening before.

Is there anything confidential in this?

Mr. Bellmore: I am sorry, we just completed it this morning. It is not evidence as such, sir, but it is an outline of the position that is expressed in that big, thick 320-page document. We are just trying to crystallize the issues for you.

Mr. Mancini: I think you missed my point and I understand you are under time schedules. We are under a very severe time schedule. We are going to be asked to make some very serious judgements here, that involve a lot of people and a lot of money.

Now, it is up to the committee. I am not going to advise the committee on what they should or should not do. Every member is going to have to make up his own mind, but I plead with you, Mr. Chairman, that if we are going to be given information, let us do all that we can to get it in front of the committee members in enough advance time so we can appropriately take part.

Mr. Ashe: I frankly think the approach this morning is a very reasonable and a very practical one. For those who took the trouble to be here last Friday and read the indicated sections that were drawn to our attention by counsel, they all relate either to the Ombudsman's day yesterday, if you will, and the start of the ministry's days today and tomorrow, and in much more detail obviously than a four-page summary. But in my view the four-page summary is succinct and really draws together all of the various sections that, it is hoped, most of us took the trouble to read between last Friday and yesterday.

Mr. Shymko: I understand that Mr. Mancini's comment pretty well relates to the problem we discussed yesterday, and that is the two volumes of documents and material that were submitted. Essentially, if that is the gist of his comments, we have discussed that and debated, but what we have just received, at least, what I see, is just a four-page summary, a compilation of the issues in those two volumes. I did ask the ministry representatives to give us at least an indication of which parts of the two volumes are important for us to look at, so I have been satisfied with the reasonable sort of summary I have received now, but--and all of this, so I have no problem with this.

Mr. Philip: I find the summary very helpful and I appreciate that it has been done. I think it seems to conform with what I was able to see as the ministry's position and I think that it facilitates our process. I suggest we get on with it.

Mr. Mancini: In closing, I do not want to quarrel with how well prepared the summary is. That was never part of any of my comments, but if the committee wishes, and I defer to the majority of the members, if they wish to proceed in this manner, it is fine with me.

Mr. Chairman: Shall the committee proceed? Agreed. Go ahead, sir.

Mr. Baskerville: As Mr. Bellmore has indicated, I am a partner in the firm of Peat, Marwick, Mitchell and Co., which came about as a result of a merger with my firm, Lindquist Holmes and Co. in February, 1985.

We were retained in 1982 by the Ministry of the Attorney-General to assist the Ontario Provincial Police anti-rackets branch in the investigation of the collapse of Argosy Financial Group in March, 1980. In the course of our role in providing that assistance, we were provided access to documents of Argosy, as well as third-party documents obtained by the investigating

officers in the course of their investigation, all of which culminated in our report, a copy of which I believe has been provided to you, on our review of the syndicate mortgage portfolio of Argosy.

As a result of that investigation, as I am sure you are aware, various individuals were charged and guilty pleas recorded.

We have currently been retained by the Ministry of Consumer and Commercial Relations to review those business and financial transactions of Argosy which were subject to the report we had issued for the Ministry of the Attorney General.

What I would like to do this morning is form a review of the syndicate mortgage portfolio to assist you in assessing the state of the mortgage portfolio and perhaps to give you some insight in summary form as to how the mortgage portfolio evolved leading up to the collapse of Argosy.

I have prepared slides. I do not mean to take up an inordinate amount of your time in going through a large volume of numbers. There are numbers there, and I do ask your forgiveness for the volume of numbers; however, I will be referring to them as I go.

In terms of an overview of the syndicate mortgage portfolio, it commenced in 1975, and there were mortgages by Argosy in which investors were offered participation. At the end of December 1985, the extent of that mortgage portfolio was approximately \$577,000. The major growth in the syndicate mortgage portfolio occurred in 1978. What I have now on the overhead is a summary by year, as at December 31, 1977, June 30, 1978, December 31, 1978, and April 30, 1979, all of which was available on the financial statements of the Argosy group, as well as the latest available figures from the records of Argosy, as at February 29, 1980.

What the schedule summarizes are the total amounts advanced on the various syndicate mortgages by Argosy, including accrued interest or interest charged but not yet received, a portion of those syndicate mortgages that were attributable to the interest of Argosy, as well as those portions relating to related parties of the officers, directors and management of the Argosy group.

As you can see, during the first six months of 1978, there was significant growth in the syndicate mortgage portfolio, which continued through to the end of December 1978. As at February 29, 1980, which was the end of the month preceding the collapse of the Argosy group, total mortgage advances were in excess of \$29.6 million, which includes interest of \$3.9 million on those mortgages which had not yet been received. So in terms of pure principal, we are talking approximately \$25.6 million. Related to those mortgages, as of February 1980, investors had approximately \$21.6 million, which included interest of approximately \$138,000 that had not yet been paid.

Many of the loans contained in the portfolio in the latter part of the life of Argosy were mortgages which had originated in the early years and carried on through to the date of collapse.

What I would like to put up now is probably a rather intimidating schedule detailing the loans.

Mr. Philip: Could we dim the lights? I think it would be easier for us to see.

Interjection: It says, "Do not touch the light switches."

Interjections.

Mr. Baskerville: I trust I will be able to read my notes.

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Interjections.

Mr. Baskerville: This schedule details strictly the principal portion of those mortgages I summarized in the previous schedule. As you can see from this, many of the mortgages which had been established in the early days, and I have used as a starting point the end of 1977, carried on and remained on the books of Argosy through to the date of receivership.

Under the column "loan number," there is a reference or letter R, which refers to a related-party loan, that is, a loan in which one or more of the principals of Argosy had a financial interest.

As I mentioned earlier, the mortgage portfolio expanded significantly in 1978, and the great majority of that expansion took place through the commencement of related-party loans. As well, that practice of granting related-party loans carried on up to the date of receivership.

What I would like to do now is to look at those loans in overview and look beyond the accounting records which display the quantity or dollar value of moneys advanced and look at the information which is underlying those mortgages in terms of the security provided. I feel this is important, in that it looks beyond the accounting records or the financial information which may otherwise be available in order to assess those mortgages and the amounts outstanding.

In assessing what security or what value may be attributed to those mortgages, I think it is important to consider certain factors which provide that value to the security. Those factors include the situations which will permit time of development, particularly in the case of loans for development of properties where it is raw land subject to development, looking towards the time of development of those properties and the realization of the value, whether assessed or otherwise estimated.

The type of factors I would refer you to would be development approvals, again looking at raw land where the appropriate zoning is in place to permit development, where there is the drafting and submission of plans of subdivision to enable the proper servicing of that property to permit development and timely realization; the market for the property, notwithstanding all the other factors that may be in place permitting development, if there is no market and, obviously, the value attributable to that piece of property may be in jeopardy; and also, looking at the aspect of expenditures, borrowings relating to the development of that property which were not put to their intended use.

All those factors, which do not appear in the accounting records and do not appear on financial statements, are all relevant in assessing the value of those assets, being the mortgages receivable, by looking at the security; that is, going beyond those kinds of records.

In terms of the Argosy portfolio, for ease of discussion, I have broken

them into two categories, those that took place in the east, in Ontario, and those that took place in the west, in Alberta. I think they each have characteristics or situations that do make them different as well, beyond the geographical.

In looking at the loans that took place in Ontario, of the total of 25 loans, this reflects 13, with a total principal and accrued interest of some \$17 million as at February 1980. The bulk of these loans were to what I will refer to as arm's-length parties. There were some related parties, and there are some indications, by virtue of the conversion of some of the mortgage proceeds, which may bring those mortgages closer to related-party-type mortgages.

In Ontario, the nature of the loans was primarily for purchase of raw land and for the development of that land through to the stage of sale.

What I would like to do on the next slide is to throw up, for certain of these loans, nine of the 13, aggregating some \$14 million, a summary of information relating to those factors I indicated.

Where I have tried to summarize on this schedule is for certain of the loans. Certain events took place for which it is important to understand the various factors of developmental approvals, status of the projects and so on to understand the nature and extent of security that had been provided.

For example, the first item you see is in respect of loan 764, referred to as the Annwood loan. The date of the event was February 1977. The significance of this date was that Argosy exercised power of sale. In looking at the status of that particular mortgage and the security, look at the required development approvals relating to zoning, plan, subdivision, etc.

At the time the loan was committed by Argosy, the appropriate development approvals had been achieved. At the time the power of sale was exercised, obviously those same approvals were still in place. However, at the time of the Argosy receivership, when I describe apparent status of the project, it remained undeveloped; that is, there was no market for those particular properties.

A third aspect is whether there was some dilution of that security through the apparent removal of mortgage proceeds; that is, use of mortgage proceeds for other than their intended purpose. In this particular case, there was such use.

Each has a significant event that took place, whether it is a mortgage being fully advanced as at that time or whether the mortgage had matured at that time and had been extended or rolled into a new mortgage, all looking at the required development approvals, the status and whether there had been the apparent removal of proceeds.

In terms of a detailed review, I would like to pick one in particular. The reason I have picked this one is that it was a major mortgage receivable in the Argosy portfolio, in excess of \$4 million. This is the loan referred to as loan 842 that I will refer to as the Blake loan.

The significant event in 1978 was that the \$4-million loan had become fully advanced, and as at that date it was a four-stage project on which the required development approvals had been achieved only for stage one. As of the date of the event that status was in place, servicing of stage one had been

achieved at the time of receivership or the collapse of Argosy, but no more, and there was significant removal of mortgage proceeds that were not used in the development of the project.

In following through the history of that particular mortgage, it was initiated in 1976 in an amount of \$1.25 million. The purpose of that mortgage was to discharge existing mortgages on the property, provide some measure of interest payments on the mortgage itself, as well as to provide moneys for the servicing of stages one and two. As I mentioned, it was a four-stage development. At that point, the appropriate development approvals had been achieved in order that development could begin.

In approximately a year, July 1977, the loan was fully advanced; that is, all moneys relating to the principal had been advanced. On review and analysis of what those moneys were used for, there was an approximate amount of \$58,000 to or to the benefit of Mr. Carnie and Carnie Investments; the principal of the mortgagor, Ron Blake, approximately \$112,000; and in addition the purchase of additional land by Mr. Blake and related companies of \$42,000.

Just prior to that event, Argosy had committed to granting a mortgage in the amount of \$4 million, which was to discharge that original one. It was to provide for discharge of other mortgages on the properties relating to this four-stage development of about \$1 million, as well as providing moneys of approximately \$900,000 for the servicing of stages one, two and three. At that point, there had been no further development approvals for the remaining stages of this project. This loan for \$4 million became fully advanced at March 1978, which is the date I have on that schedule. Subsequent to that date, there were no payments on account of interest received from the mortgagor and additional advances were made over and above the \$4 million.

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At that point, the servicing of the property, as was anticipated under the mortgage commitment by Argosy, had commenced but had not been completed, although there was some measure of completion at the time of the collapse of Argosy. Out of the mortgage proceeds of this new \$4-million mortgage there was approximately \$428,000 that ultimately ended up in Carnie Investments Ltd. in Florida, an additional \$5,000 directly, as well as \$32,000 indirectly, to the benefit of Carnie Investments in Florida.

As I mentioned, there were no payments of interest, let alone principal, subsequent to this event of March 1978. However, in April 1979, there was a significant paydown of accrued interest--that is, interest charged on the mortgage but not yet received--of almost \$800,000. At that time, the amount of interest that had not been paid was significantly in excess of \$1 million.

That payment was made possible by the granting of a mortgage by Argosy to a project out west called Abbottsfield Estates. Those moneys in turn were sent to Florida to Carnie Investments Ltd. and repatriated to Argosy in payment of interest on this particular loan. This was all accomplished through a noncash transaction and was done on the records without any cheques being written. It effectively resulted in an increase in the syndicate mortgage portfolio and a paydown of interest. No cash changed hands. The mortgage was then available for syndicate investors.

That is dealing in summary with the eastern projects. In many of the other eastern projects, there are certainly indications of moneys from the mortgage loans being converted to uses outside the project. As I say, I do not

want to bore you with detail. Much of it is contained in the report I believe you have in front of you.

Several of the eastern loans, although not related-party transactions, did not pay out the principal on maturity and did not make payments on account of interest once the loans had become fully advanced, because of market conditions, which market conditions existed up until the time of receivership in March 1980.

I would now like to take you to the west; that is, to the projects and the loans made to companies in Alberta. I am referring to 12 of the 25 loans with principal and interest of approximately \$12 million.

To give you a bit of background as to what this western scene or this Alberta scene was, beginning in 1977, Carnie and Saunders became involved in residential construction in Alberta through a company called MURB Consulting Services Ltd., which subsequently became National Land Corp. The role this company played out there was to provide consulting services in the development of several projects, all of which were related to tax shelters; that is, MURBS, or multiple-unit residential building projects, for which this company would charge a significant fee, often referred to as soft costs.

As well, this company owned two such projects outright and in addition, Carnie and Saunders, through jointly owned companies, were involved in the purchase of other properties independent of MURB Consulting Services.

Argosy's entry into the western scene commenced in 1978 through various avenues, one being loans directly to some of those projects that were under development in which the Carnie and Saunders companies were involved as consultants. There were Argosy loans to what I will refer to as MURB Consulting Services, secured by mortgages on various of the projects it was involved in as a consultant, and to the companies directly, those companies being owned by Carnie and Saunders.

In terms of MURB's role in the various projects out west, as a consultant it was responsible for the operation and the conduct of the project through the development phase. In the course of carrying that out, it had responsibility for and made disbursements relating to the projects, but as well, was a net borrower of funds from those various projects. I am referring to the projects that had borrowed from Argosy and had provided mortgages on the properties as security for those borrowings. MURB had also borrowed directly from Argosy.

In June 1978, the financial statement of this company indicated that it had borrowed in excess of \$600,000 from those projects in addition to in excess of \$1 million from Argosy. What it did with those moneys, based on the financial statements of MURB Consulting Services--there is an investment by that company in farm operations, primarily race horses, of \$310,000, as well as unsecured, non-interest-bearing advances to related companies of Carnie and/or Saunders of approximately \$1.8 million.

The impact of this borrowing from the projects was that in three of those situations where it was retained as a consultant by the project, it was terminated. It was terminated because there was a delay in making the necessary payments to trades and suppliers to those projects.

The situation of MURB carried on beyond June 1978 to December 1978, at which time it had borrowed additional moneys, both from the projects and from Argosy. Again, those are the projects that had borrowed from Argosy themselves.

In looking at the financial statements of MURB and understanding its financial position, it would appear that it borrowed only \$29,000 at that date from these various projects. However, this was accomplished through what I will call a window-dressing of the financial statements of MURB, through bank borrowings and repayment to those projects on December 29 and those projects in turn putting the money back into MURB on January 2 to give the appearance that in fact MURB Consulting Services Ltd. owed very little money to these projects.

I am not going to go into great detail as to the gymnastics that are followed in this window-dressing transaction, but on the left-hand side where it says, "As reported on the financial statements," it was owed \$530,000 by client projects and had borrowed \$559,000 from other projects for a net of approximately \$29,000. That was the result of approximately \$1.6 million being disbursed to various of those projects that it had borrowed to and from, which, if it were reversed to reflect the true state of affairs, reflected that it indeed was owed only \$39,000 by projects but in fact owed the projects, and these are projects that had borrowed from Argosy, in excess of \$1.7 million.

At that point, Argosy was standing with significant loans to various of these western projects and to MURB Consulting Services, a significant portion of which had found their way to MURB Consulting Services by way of intercompany loans.

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I guess an important distinction here is what the audited financial statements reflected, which is the "As Reported" column. The "Revised" column is what we have done to eliminate the effect of those December 29 to January 2 transactions.

The uses to which the moneys had been put by MURB Consulting Services were primarily farm operations, almost \$900,000, and advances of approximately \$1.4 million to related companies in Florida related to Carnie and Saunders. In assessing the security relating to these loans from Argosy, both to the projects and to MURB Consulting Services, you would have to look at the ability of the mortgagor to repay those moneys; in the case of MURB Consulting Services, the moneys it had advanced to related companies. Carnie Investments in Florida was one of them. The financial statements of that company indicate a deficit; that is, its liabilities exceeded its assets in the approximate time by some \$250,000, which would certainly lead one to question the ability to repay its loans from MURB Consulting Services, and in turn, MURB Consulting Services repaying its loans to Argosy.

In respect of the projects, some of the funds that had been received by MURB were from or related to the Argosy loans, which again results in a dilution of the security provided to Argosy to the extent that MURB's ability to repay those loans may be questioned.

I mentioned there were other projects out west to which Argosy had lent moneys. I want to draw your attention to one in particular. This is what I will refer to as the Lloydminster project. The Lloydminster project involved property acquired by a company owned by Carnie and Saunders in Lloydminster, Alberta. It acquired the property in November 1978 for \$400,000. Immediately, Argosy granted a mortgage to that company in the amount of \$1 million.

The uses of those moneys were to purchase the land as well as provide

funds for other purposes of MURB Consulting Services, which received in excess of \$300,000. Interestingly enough, \$65,000 was sent to MURB under this loan in return for investment in Argosy preference shares. As well, Carnie Investments in Florida received directly from Argosy, charged to this loan, \$115,000.

Again, when you look at the amount of the mortgage that was outstanding and look beyond that number to the value of the security provided, you would have to question the ability of that mortgagor to repay and what security or what value in that security was available for realization. There was an appraisal on the property I believe for \$7.6 million and it referred to a completed project for approximately 344 residential apartment units. Had the project been built and completed, it would have been worth, according to this appraisal, in excess of \$7 million.

Unfortunately, the company could not get mortgage insurance through the Mortgage Insurance Co. of Canada or CMHC by virtue of its position beside a railroad yard and a Domtar chemical plant.

In summarizing the Argosy portfolio as I have done, I am trying to draw your attention to looking beyond the accounting records, looking beyond the amount of cash that was transacted, to the value of the security which was provided in support of that particular loan in order to assess the ability to realize.

I would also like to spend a few moments dealing with the issue of cash flow at Argosy Financial Group of Canada Ltd. It would appear that cash flow deficiencies were being experienced. When I refer to "cash flow deficiencies," in simple terms it is when the amount of cash coming in is less than the amount of cash going out by Argosy. That commenced in approximately mid-1978.

What this schedule shows is a summary from Argosy's own internal records of the cash flow position of the company during the various months through 1978 and 1979. The first column refers to the amount of shortfall of cash coming in over cash going out.

You can see that by June 1978 there were significant negative balances arising. In looking at the causes of that, there are several reasons. You mentioned earlier in mid-1978 there was a great expansion in the syndicate mortgage portfolio of Argosy, primarily to the western projects, the majority of which were related parties.

As well, in several instances there were mortgage advances made or moneys advanced on mortgages beyond the mortgage amount, particularly the Blake mortgage, which we looked at briefly earlier, where some \$700,000 in excess of the mortgage amount had been advanced, as well as another loan in Ontario referred to as the Prolan loan.

As far as cash flow from operations, it was a significant factor in this negative cash flow, whereby the amount of operating expenses and the payment of investor interest was not offset by the amount of cash coming in from mortgagors in respect of their interest payments. In fact, many of the loans were not paying interest.

To the extent that the Argosy policy provided for advancing on the mortgage to pay interest on a particular mortgage, many mortgages had been fully advanced with no further ability to do so and the interest continued to be accrued.

I have prepared a slide to try and highlight what that means in terms of an operating cash flow deficiency, whereby the amount of cash coming in to support the operations of Argosy and enable payment of investor interest is dependent upon the inflows from the mortgagors.

Mr. Ashe: Can you comment briefly on the rights issue for the two figures in November and December 1978?

Mr. Baskerville: To the extent that the negative cash flow or the shortfall on cash coming in during this period was offset by various financings. There was the series 1 debenture issue, the doubling of the Royal Bank of Canada loan from \$2.5 million to \$5 million and this rights issue, which I will refer to as the preference shares of Argosy, in November and December.

Mr. Ashe: That is what they were. They were preference shares.

Mr. Baskerville: Some of which was financed by Argosy loan advances.

The operation of Argosy and its ability to make payments both to its ordinary suppliers of goods, services, wages, salaries, rent and so on, and then payment to the syndicate mortgage investors, was dependent upon the inflow of cash from mortgagors on payment of interest as well.

I have just summarized the amount of interest that mortgagors owed Argosy at various points in time, as compared to the amount of interest that Argosy owed syndicate mortgage investors, to highlight where some of the pressure or cash shortfalls occurred.

As you can see, at the various dates the amount that mortgagors owed and had not paid is significantly in excess of what they owed syndicate mortgage investors. That was because the syndicate mortgage investors were paid, to the best of my knowledge, regularly and in full amount.

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As of February 29, 1980, the amount of the unpaid mortgage interest had skyrocketed to almost \$4 million. At the same time, the investors were continuing to be paid their interest.

In looking at the ability or inability of mortgagors to pay their interest, I want to draw your attention to interest payments by those mortgagors I referred to as the western projects. This schedule details the amount of interest paid by those mortgagors out west from the period of the inception of the mortgages up until the date of receivership. Most of the projects had issued cheques to Argosy in payment of interest which had been returned "nonsufficient funds."

At these various points and times when interest was received, it is interesting to note the source of those funds. As at October 19, 1978, Argosy received \$32,000 in receipt of interest. These moneys were provided by a mortgage advance on one of the western projects referred to as Windsor Court, which is loan 883. Argosy advanced \$32,625 which was returned as interest payments on the various other loans.

In December 1978, Argosy received \$236,000 of interest. That was funded by advances on Windsor Court again, as well as borrowings by MURB Consulting Services. As you will recall, that was the company out west owned by Carnie

and Saunders, which borrowed money from one of its projects through borrowings at the Royal Bank of Canada, as well as using mortgage advances on a project that we referred to as Lloydminster.

In February 1979, Argosy received \$89,000. That was provided by MURB Consulting Services using moneys borrowed from one of its projects which had borrowed from the Royal Bank of Canada on the strength of a mortgage security.

In August 1979, we see significant payments having been made on account of several loans. I use the term "payments" loosely. It was done as an accounting entry in the records of Argosy, referring to an advance on a mortgage known as Morwest.

What this highlights is that the various projects and companies out west to which Argosy had loaned moneys did not have the ability themselves to make payments on account of interest. Based on that inability, one would have to question its ability not only to continue making payments of interest, but also its ability to repay principal when and if it matures. As to the status of the various projects, we can run through this list. Permalease had one of its three buildings blown down in a windstorm. Woodvale, surprisingly enough, did get completed and rented. None of the others, excluding Abbottsfield, was ever completed at the date of receivership. Lloydminster, which we talked about, remained vacant land. Abbottsfield--I referred to the Blake loan which was used to pay interest on account of that loan--was an existing building that was acquired by MURB Consulting Services. It, itself, did not have the ability to make the payment of interest.

Having reviewed the Argosy portfolio and the apparent cash position of Argosy, we can summarize what that impact was on Argosy as a going concern, as well as on the investors.

As we saw, there was a significant expansion in the syndicate mortgage portfolio, certainly commencing in 1978, together with an increasing and continuing cash-flow-from-operations problem which continued up to the date of the collapse of Argosy. This was primarily as a result of the inability of mortgagors to make interest payments on account of the mortgage and the inability of the mortgagor to pay the principal amount due upon maturity.

This inability reflected the status of the project--and we did go through a few examples--which was provided as security for the mortgage or for the loan, and the financial resources of the mortgagor. For many of the loans, the property, while intended for residential or commercial development, did not have, in many cases, the appropriate development approvals which would enable timely development of the property and realization of its appraised potential. In other cases, development had commenced. However, market conditions did not enable the developer to generate sufficient revenues to discharge his obligations to Argosy upon maturity of the loans.

The impact on the investors in the syndicate mortgages would be one of, in effect, assuming the risk normally associated with ownership of the land, in that the land lacked the appropriate approvals and the mortgagors, the principals, had little tangible equity in the various projects.

On the aspect of security, questionable security was provided in several of the loans, most notably those out west, where loans had been provided to this company called MURB Consulting Services on the strength of a mortgage on property which reflected its soft cost fees to that project and the apparent dilution of security through the conversion of mortgage proceeds to use outside the particular project for which it was intended.

That concludes my comments.

Mr. Kerzner: You made reference to your report, which you understood we had. I gather that a number of the schedules you put up on the screen are appendices to that report?

Mr. Baskerville: Various of these should be included as part of the report.

Mr. Kerzner: What we appear to have are the first 15 pages of your report in tab E, section 4, but unless they are mixed up in the middle of that report rather than as appendices, it does not appear to me that we have all the schedules.

Mr. Ashe: What difference does it make? We have been drawn very clearly the picture that there were games being played with the money and on limited security, but to get into the real nuts and bolts of the nitty-gritty, how is it relevant?

Mr. Kerzner: All I want to do is to get copies of what we were shown on the screen, because I think they exist in hard form, so we will have them later on. That is the sole purpose of the inquiry.

Mr. Bellmore: If they are not in your book, we will undertake to make photocopies of all those schedules available to you and the committee members.

Mr. Kerzner: If you could.

Dr. Anisman: If I may help with that--I am sorry to interrupt--I gave you my copy of that report. I have not checked the materials handed out by the ministry's counsel yesterday. In my copy, all the graphs were on as schedules because I had a photocopy. It is possible those graphs were included in the report as presented to you.

Mr. Kerzner: Some are interspersed, but I cannot tell if all of them are there.

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Dr. Anisman: What is not included is the detailed summary gone through by Mr. Baskerville with respect to various of the individual syndicated mortgages. I hope you will get it because on my reading of those summaries, I think one can see that a number of the syndicated mortgages described as nonrelated, as arm's-length mortgages, really did involve payouts to Mr. Carnie or to affiliated corporations of Mr. Carnie's that from a nontechnical perspective might be viewed as related.

Mr. Kerzner: That may come as a result of the next question. As I looked at one of those schedules, the number of mortgages you showed as related appeared to be significantly less in number or percentage than what we have been told by the Ombudsman's people were related mortgages. I would like you to tell us what criteria you used in establishing what were related and what were not related in terms of which ones you put an "R" beside and which ones you did not.

Mr. Baskerville: The ones I put an "R" beside reflect mortgagors in which one or more of the principals of Argosy had a financial interest.

Mr. Kerzner: For example, if a loan were given to a company in which a principal of Argosy did not appear, but the proceeds of that loan were then taken and in some way used to pay off a liability of a principal of Argosy on some other mortgage, you would not have classified that as related.

Mr. Baskerville: No, I did not. There would be four or possibly five more in addition to what I listed that would fall into that category.

Mr. Kerzner: In gross total, roughly how many principal dollars of mortgage?

Mr. Baskerville: All encompassing? Both categories?

Mr. Kerzner: No, we can pull off the schedule the dollar value of the "Rs." What about these other four or five that might have been indirectly used to benefit principals of Argosy by paying off their debts on earlier mortgages from Argosy? If that had not happened, we would have more outstanding mortgages to put "R" beside.

Mr. Baskerville: Those would be approximately \$10 million.

Mr. Kerzner: Thank you.

Mr. Ashe: I have a related question. You talked about putting an "R" if they were directly related to the principals of the company, as principals only. What about a spousal interest or other related family interests that were supposedly not directly involved in Argosy? Were there any of those situations?

Mr. Baskerville: Not that I am aware of.

Dr. Anisman: I am not quite sure of this committee's procedure, but to get this out while Mr. Baskerville is here and to be as helpful as I can, I gather from reading the summaries that a number of the syndicated mortgages involved brokerage fees to Wilcar Investments Ltd., which was a Carnie-owned company, and also involved payments that may not have been to an existing liability to Mr. Carnie but simply payments of the kind described with respect to loan 842.

Mr. Kerzner: Do we really need to do that? If we add the \$10 million Mr. Baskerville has just told us about to the dollar value of the ones that have "R" beside them on his schedule, we must easily be at 75 per cent of the mortgage portfolio.

Dr. Anisman: I was trying to bring it to 90 per cent.

Mr. Kerzner: Does it really make your case any less strong if it is 75 per cent rather than 90 per cent? Thank you. Those are all the questions I have.

Mr. Chairman: Any questions from the committee?

Mr. Ashe: No, let us get on with it.

Mr. Philip: I have a question. I am sorry. I had to take care of certain functions that come naturally to all of us. If the question has been asked, I apologize.

Assuming the registrar of mortgage brokers knew that Carnie had some problems and was involved in this company, perhaps through the back door but was none the less involved, had the mortgage broker exercised the authority he has under section 25 of the act in 1977, could this whole thing have been cut short considerably in that the losses that accrued through 1978-79 could have been prevented? Is that a reasonable assumption one could make?

Mr. Baskerville: I am not familiar with what powers of investigation the registrar may have. If I can refer to our own investigation or our role in the investigation into the collapse of Argosy, I will just outline the extent of information documentation that I and my staff had access to, which permitted us to arrive at the conclusions and observations indicated in our report. It included substantial amounts of documents from third parties out west, in Ontario and in Florida, from mortgagors, banks and so on; quite an exhaustive list. Whether that information could or would have been obtained in the course of an investigation, I do not know. I do not really know how to answer that because I do not know what they could have done.

Mr. Philip: Under the act, "The minister may by order appoint a person to make an investigation." In other words, on the recommendation of the registrar of mortgage brokers, an investigation could be made. Do you agree that had an investigation been made, this kind of matter would have been found in 1977, that the irregularities, the diversion of funds to purposes for which the mortgage was not intended would have been discovered by an investigation in 1977?

Mr. Baskerville: I suppose it would hinge on the scope or the focus of the investigation. Our involvement began after the collapse and after the Ontario Provincial Police had commenced its investigation into the collapse of Argosy. Our focus was very directed. To the extent that their focus would have been directed and they would have had access to all the documentation and information that we had access to, which covered a span of approximately two years. I presume they would have made the same observations we did.

Mr. Philip: Had an investigation been conducted in 1977 under the Mortgage Brokers Act, they would likely have reached the same conclusions you reached.

Mr. Baskerville: Bearing in mind whether they had the focus we had and access to the same documents we had. I would hope--

Mr. Philip: There would be no problem with access to the documents. What I am asking is, if you had conducted your same investigation, but in 1977, would you have had reasonable grounds to make the same conclusions? Was there enough evidence in 1977 to come to the same conclusions you later came to?

Mr. Ashe: It seems most of the games were played in 1978-79.

Mr. Baskerville: That is a fair comment.

Mr. Shymko: Can I ask a question?

Mr. Philip: I think he is thinking, and I would like the answer.

Mr. Baskerville: Yes, I was thinking.

Mr. Philip: I am getting at a point in time when, if there had been

an intervention, the rest of the problem could have been solved. I am asking, was there enough evidence in 1977 so that if you had conducted it, you would have at least said--would you have arrived at the same conclusions, and if the answer is "no," would you at least have arrived at some conclusions that there was something terribly wrong with the whole thing and that it warranted further scrutiny?

Mr. Baskerville: I am not sure I would have. The reason I say that is that the extent of the portfolio was not nearly what it was in the ensuing years.

Mr. Philip: I recognize that.

Mr. Baskerville: The things that went on in terms of who was lent to and what was done with the proceeds really took place in 1978. There was some small measure in 1977. I certainly think there would have been questions I would have asked relating to security, but back at that point, which was some two or two and a half years prior to the collapse of Argosy, I do not think those problems relating to security would have been as serious because of the minimal diversion or conversion of proceeds outside--

Mr. Philip: What I hear you saying is that, depending on the year, you would have had stronger evidence to say, "Oh, my goodness, what is happening here?" But in 1977, there was at least some evidence that would have made you very cautious and very concerned and perhaps would have made you ask some very tough questions.

Mr. Baskerville: On the basis of having access to the same extent of documents and conducting the same review?

Mr. Philip: On the documents that would have been available in 1977.

Mr. Baskerville: I do not think I can answer that. I find it very hard.

Mr. Ashe: Keep trying. Keep trying.

Mr. Philip: I am sorry if I am trying to get the information. I know it must be embarrassing to you.

Mr. Ashe: He has already told you three times that 1977 was different than 1978 and 1979.

Mr. Philip: I know it is very embarrassing to you, George. You were a cabinet minister at the time all these people lost their money. I still have the right to ask the questions.

Mr. Ashe: As a matter of fact, I was not in 1977, 1978 or 1979; just for your information.

Mr. Philip: It shows the government had some good judgement in those years then.

Mr. Ashe: That is true. It will continue to have it when you are gone next time.

Mr. Philip: Would you like to take a bet on that?

Mr. Baskerville: I really do not know how to answer this, to put myself in that position back in 1977.

Mr. Philip: I accept that. Thank you.

Mr. Chairman: This might be a good time to break for lunch. We will return at 2 p.m.

The committee recessed at 12:14 p.m.

STANDING COMMITTEE ON THE OMBUDSMAN

ARGOSY FINANCIAL GROUP OF CANADA LTD.

TUESDAY, APRIL 14, 1987

Afternoon Sitting



STANDING COMMITTEE ON THE OMBUDSMAN

CHAIRMAN: McNeil, R. K. (Elgin PC)

VICE-CHAIRMAN: Sheppard, H. N. (Northumberland PC)

Bossy, M. L. (Chatham-Kent L)

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McLean, A. K. (Simcoe East PC)

Morin, G. E., (Carleton East L)

Newman, B. (Windsor-Walkerville L)

Philip, E. T. (Etobicoke NDP)

Shymko, Y. R. (High Park-Swansea PC)

Substitutions:

Ashe, G. L. (Durham West PC) for Mr. Sheppard

Offer, S. (Mississauga North L) for Mr. Morin

Clerk: Decker, T.

Staff:

Kerzner, T., Legal Counsel; with Perry, Farley and Onyschuk

Evans, C. A., Research Officer, Legislative Research Service

Witnesses:

From the Ministry of Consumer and Commercial Relations:

Baskerville, J. E., Consultant; with Peat, Marwick, Mitchell and Co.

Bellmore, B. P., Legal Counsel; with Lockwood, Bellmore and Moore

Mitchell, D. L., Director of Consumer Services; Former Director, Investigation
and Enforcement Branch, Business Practices Division

LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON THE OMBUDSMAN

Tuesday, April 14, 1987

The committee resumed at 2:05 p.m. in room 151.

ARGOSY FINANCIAL GROUP OF CANADA LTD.
(continued)

Mr. Chairman: Members of the committee, ladies and gentlemen, we will resume our hearings.

Mr. Kerzner: Before we hear from Mr. Mitchell, I understand, Mr. Baskerville, you want to touch on one matter which, in either the excitement or the darkness of the slide show, you left out. You want to take two seconds and give that to the committee.

Mr. Baskerville: Yes, that is correct. I want to refer to a memorandum from Mr. Steele of the Ontario Securities Commission. It is located on page 39.

Mr. Kerzner: This is in the ministry documents that were filed yesterday.

Mr. Baskerville: Section A, volume 1, page 39.

Mr. Kerzner: It is one of the two volumes that the Ombudsman's office was going to try to find the reference to, or give us the document, whichever.

Mr. Chairman: Please proceed.

Mr. Baskerville: Thank you. In that memorandum, Mr. Steele outlines certain concerns that he had with respect to the prospectus of the Argosy Financial Group and the resolution of those concerns. The nature of those concerns relates primarily to the receivables or the mortgages outstanding and, in particular, what is referred to as an allowance for doubtful accounts. That is a provision which is made in accounting records where it is doubtful that there will be collection of amounts outstanding and owing to the company.

His concerns arose from the policy followed by the company in respect of recording interest that is owed until the value of the underlying security is no longer adequate. He expresses certain concerns with respect to the impact that may have on the overall evaluation of those assets. He goes on to say how he has resolved those concerns and relies on the representations made to him in the course of meetings with the representatives of Argosy, with the auditors of Argosy, as well as office management and auditors.

As he mentions, the items, although a concern, really reflect a matter of professional judgement and, based on the representations of the auditors, particularly in respect of their audit opinion of the financial statements, the comfort letter that they had provided and their discussions, he is deferring to the professional expertise of the auditors.

Of the representations he is referring to, of course, one is the

auditors' report accompanying the financial statements as of December 31, 1978. The comfort letter, which, in that same brief of documents, is located on page 28, tab A-1, just preceding the document we are looking at. It is what is referred to as a comfort letter, which is required under professional standards, as outlined in the Canadian Institute of Chartered Accountants Handbook, where there are unaudited financial statements, that is, statements for which an audit has not been done, contained in a prospectus.

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In the prospectus of the Argosy Group there were unaudited financial statements for the four-month period ending April 30, 1979. That is what this comfort letter refers to, and I emphasize the word "unaudited."

In respect to specific representations dealing with the allowance for doubtful accounts, that is, an allowance to provide for assets which may not be recovered, in this case the mortgages outstanding, various discussions were apparently had by Mr. Steele, the auditors and the management of Argosy. A letter was provided by the auditors of Argosy, found on page 35, which indicates that the allowance or the provision for nonrecovery of mortgages outstanding, as at April 30, 1979, in the amount of \$360,000 was adequate based on the limited procedures they had performed, in that it was an unaudited figure.

That same letter goes on to indicate what procedures would have been followed in order to express an opinion, that is, to state and provide an opinion as to the fairness or adequacy of that allowance. That is on the bottom of page 36, where it says: "Were an audit to have been conducted additional procedures would have included, among other things, the following:" and there is a list of five procedures, not an exhaustive list I presume, of things that would have been done had an audit been performed.

I say this to clarify the issues in respect of the representations. The procedures included positive confirmation, which refers to direct communication between the auditors and the mortgagor as to the terms of the mortgage, the amount of the mortgage outstanding, the amount of interest, and so forth. I ask you to look at number 2: "Detailed assessments of the underlying security and current evaluations of the property values and underlying mortgage obligations."

Then there is number 3, review by the audit committee, number 4, review of the applicable mortgage files and the records of Argosy, and number 5, examination of transactions subsequent to the balance sheet date, all of these being procedures that they would normally follow, as they indicate, to provide an opinion on the accounts receivable and the allowance for doubtful accounts.

In view of those representations, the resolution by Mr. Steele in deferring to the expertise or the opinions and representations of the auditors, strictly in the circumstances, was reasonable.

Mr. Kerzner: Mr. Baskerville, I take it that you yourself have not been or had been a part of a securities analysis or review organization.

Mr. Baskerville: No.

Mr. Kerzner: When you say you think his position was reasonable, I take it you are simply saying that anyone who receives the sorts of assurances that this fellow received from a firm like Thorne Riddell should be allowed to rely on them.

Mr. Baskerville: Yes, in view of the concerns that are indicated.

Mr. Kerzner: Do you also say he should have taken no account of his own personal reservations about the answers he was getting?

Mr. Baskerville: As he spells out in the memorandum, his concerns actually rested with the aspect of the underlying security. On the top of the second page of his letter, on page 40, he refers to the fact that interest rates and fluctuations and the changes that were occurring were "a red herring as these defaulting mortgages must rely on the value that they can be sold for," which relates to the underlying security.

As well, when he refers to the company's policy of recording interest that is owing on defaulting mortgages, he is referring to the fact that it is done until the value of the underlying security is no longer adequate. To the extent that he has received the assurances from the auditors, by virtue of the audit opinion they have expressed and the representations contained in the comfort letter, these are sufficient for his purposes, that is, to the extent of the procedures the auditors indicate they would have performed in the course of an audit, it is reasonable to accept that as providing the comfort that those issues of value have been addressed.

Mr. Kerzner: Bearing in mind that this was described as the most closely reviewed prospectus submission that the securities commission had ever done in terms of the detail and length of time it was looked at, Steele concludes his memorandum by saying he has personal reservations, but he has signed off nevertheless.

The Ombudsman's point is that, notwithstanding what you hear from the auditors, if you have looked at this as carefully as you have because of the obvious concerns you have and if you still have some reservations about the problem areas, why not exercise the investigative powers you have and clear up your personal concerns? Steele was sniffing in exactly the right area on page 1. The Ombudsman's question is, why not follow your hunch, rely on your experience and check out the things that are still making you uncomfortable or that you still have personal reservations about?

Mr. Baskerville: As he refers to in the preceding paragraph, near the bottom of the second page of his memorandum, he does indicate that they are matters of judgement, "These are subjective factors," and that without doing an audit, which at least to the end of the December had been performed, he has deferred to the opinion and the representations of the auditors.

Mr. Kerzner: The second matter is that you have before you a bundle of documents, pages 1 through 111, which Mr. Decker distributed to you. They represent some 20 or 25 documents out of the, roughly, 150 that the registrar of mortgage brokers submitted with his response to the Ombudsman's section 19 notice. These documents are ones I thought ought to be copied and available to you during the course of Mr. Mitchell's presentation and questioning.

With that, can we call on Mr. Mitchell? Mr. Bellmore, I understand he is not, as we have been told, the current registrar of mortgage brokers? Would you like to tell us what position he does occupy?

Mr. Bellmore: As I indicated to you, I had misunderstood. Mr. Mitchell was at the material times, from 1975 onwards, the director of investigations at the Ministry of Consumer and Commercial Relations. He continues to have that function, together with others, to this day.

There were two registrars at the material times, both of whom have long since retired and are unavailable. We have made inquiries of that side of the ministry, and Mr. Mitchell is the person who is best informed of the relevant events in regard to their age.

Mr. Kerzner: I understand that Mr. Simone, who was the registrar during the period 1970 to 1975, roughly, is deceased.

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Mr. Mitchell: No, Mr. Simone is still alive, but his health is not great.

Mr. Philip: Good thing he is not watching.

Mr. Mitchell: The predecessor to the Mortgage Brokers Act, the Mortgage Brokers Registration Act, was a statute designed very specifically as what we termed a borrowers' disclosure act. The purpose of the act was to register the kind of mortgage broker who acted between borrower and lender for a fee, the most common mortgage broker of the day. We called him a straight-line broker. There was nothing fancy about what he did. Most often he was dealing in second and third mortgages and, occasionally, first mortgages. He found mortgage money.

The act set up certain rules under which the mortgage broker must operate. The act also set certain standards for registration. Basically, it meant that anybody could be a mortgage broker. Anybody had the right to be one if he met certain conditions. Initially, they were somewhat limited. It simply said that the company or the individual would operate with honesty and integrity.

The subsequent act, which came into play around 1971, opened that up a little bit and provided for an educational requirement. You had to at least know the various types of mortgages, the instruments available and there was a bit of a course that could be taken and a test that had to be written before you could get a licence. The act at no time required the registration of employees--or sales persons, if you will--people hustling business for the mortgage broker. They were not controlled by the act.

The act said that when somebody did borrow, there must be disclosure to the borrower. What is the cost of the mortgage? What is the interest rate? What are the terms of the mortgage? Also, the mortgage broker could not even take a fee up front if the mortgage was less than \$40,000. The mortgage broker, effectively, did not get paid unless he consummated a mortgage of more than \$40,000.

There was no mention at all and, in fact, I do not believe that investors as we know them today were even contemplated by this act. The mortgage broker to whom this act was directed to control did not deal with investors. Indeed, the mortgage broker in the case of Argosy did not deal directly with investors, so investor protection per se was not part of the act.

In fact, the complaints the registrar would receive and, in fact, did receive were from borrowers. Generally, the complaints were that the cost of the mortgage was too high, that the fees were exorbitant and that something called a blanket mortgage was being used which was clearly not in the best interests of the borrower. Those were the types of complaints the registrar received. The Ombudsman has, of course, been critical that the registrar did

not act properly on certain of those complaints, and I can go into that later.

Much has been said about the fact that John David Carnie was charged in 1969 with theft by conversion involving an insurance scam. That occurred perhaps six or seven months after Argosy Investments Ltd. received its first registration. Bear in mind that the trial had not yet happened, and bear in mind similarly that, normally, you cannot act on that kind of information, at least until there has been a conviction, presuming a person is innocent until proven otherwise.

The registration of Argosy was initially issued for six months. Registrations in those years were renewed annually on June 30. Argosy was renewed June 30, 1969. In July 1970, the time for renewal, the registrar, upon receiving this application late, refused to renew it. What happened prior to that was there were complaints filed with the registrar, and in fact, a director's investigation order was issued. This was in November 1969.

The inspector of the day found four matters he felt were certainly serious enough to call into question the fitness of Argosy to continue the whole registration. During the currency of that, while that report was in hand, Argosy applied for renewal of registration, and in fact, the registration came in late. The registrar refused to grant any extension, even though the lawyer for the company claimed it was his fault.

Mr. Shymko: Can I ask a question? It has been repeated twice that it came in late. Are you trying to insinuate that the refusal of the registration was because of the lateness of the filing?

Mr. Mitchell: I think I can better state it this way: If somebody comes in late for his registration renewal, it can be treated as a new application for registration, which then requires the individual to requalify.

A new application is slightly different than a renewal application. There are more questions to be answered, and perhaps the individual may have to requalify. The registrar does have some leeway, certainly in those days he did have some leeway, to grant an extension of time. When I say "grant an extension of time," technically, when the registration lapses, they should not be in business. They should not be conducting mortgage business.

In any event, during this period from July 1970 until 1971, Argosy was without registration. In August 1971 registration was then granted. John David Carnie was no longer a principal, but his father was.

In a letter to Argosy, the registrar had asked for information concerning the charge against John David Carnie. That information was not forthcoming. When the registration was granted, with the father in place, the registrar felt he had nothing against the father and that they met the requirements of registration.

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Mr. Philip: The information still had not been forthcoming at that point in time, had it?

Mr. Mitchell: It had not been forthcoming. In fact, a plea of guilty occurred, I believe, in February 1971 when Carnie pleaded guilty to the criminal charge. I might add that he was not incarcerated. I believe he got a term of probation on that conviction.

In any event, to have Carnie apparently involved in the operation was not acceptable. I submit that the registrar had a lot of hands-on in this case. He had perhaps 2,000 registrants under the act at that time. On my review of the file, every complaint that came in was in some way responded to. The recommendations of the inspector back in 1969 were dealt with by the registrar in a meeting he held with Argosy in September 1971.

Now, there had been some criticism of the registrar not acting on the inspector's recommendations but, in fact, the complaints or the matters that were uncovered by the inspector in 1969 were dealt with at that time. I think it is reasonable to assume that, because Carnie appeared to be out of the company and other matters that bothered the registrar at the time--and I think also that the registration had lapsed for a period of one year--he was of the impression they were not in business.

In fact, in August 1973 the registrar did issue a proposal to revoke the registration of Argosy. That is a requirement of the act. The registrar cannot revoke of his own volition. He must propose. If the registrant wishes a hearing, he has 15 days in which to apply for a hearing. In this case, a hearing was requested.

In the interim, the registrar, Argosy and its lawyer worked out an agreement that we call a consent order. The terms of the consent order went far beyond the requirements of the act. It was a probationary period. Argosy would be allowed to run on a probationary period of one year complying with the various terms and conditions set out in the consent agreement.

This is the way it ran for the next year. There were a couple of complaints that came to the registrar's attention but they predated the consent agreement. The registrar was satisfied that Argosy, operating under the consent agreement, would overcome the previous matters.

Certainly up until 1975, the only complaints received by the registrar were complaints from borrowers. Up until 1975, the Argosy group of companies was not involved in mortgage syndications. To my knowledge, the registrar at no time received a complaint from an investor.

The registration of Argosy Investments Ltd. received annual renewal up until June 1979. Argosy collapsed in March 1980 and the registration lapsed that year. That was the end of the registration matters with Argosy.

Once again, the only complaints on record are from borrowers. Argosy Investments, the registrar in this case, had no direct dealings with investors nor, I submit, did it make any representations to investors.

Mr. Philip: Why would you expect there to be any complaints from investors when investors were investing in another company? It is not this company they were investing in, they were investing in the front company.

Mr. Mitchell: That is correct. I am only making the observation that there are no complaints from investors. I would not expect to have complaints from investors.

Mr. Philip: There is really no point then in saying that they had no complaints from investors. The investors were getting paid at that time, they were getting their dividends.

Mr. Mitchell: That is correct.

Mr. Philip: And they were investing in a different company.

Mr. Mitchell: That is correct.

Mr. Philip: The members may want to refer to the compliance order, or whatever it is called, the document--it is on page 64--on the agreement that was reached.

Mr. Kerzner: That is in the bundle that was distributed over the lunch hour.

Mr. Philip: It really starts on pages 65 and 66.

Mr. Mitchell: I do not think we received a set of those documents.

Mr. Philip: They are your documents, so I suggest that you do have them.

Mr. Mitchell: Could you refer me to where in the documents--

Mr. Kerzner: They are in the two volumes of the registrar's documents that you gave me about two weeks ago to photocopy.

Mr. Philip: The document has a date of December 20, 1973, as received by the Ministry of Consumer and Commercial Relations, but it stems from the hearing of December 10, 1973.

If we look at the tribunal order on page 66, it has two points:

"(1) The registration of David A. Walker carrying on business as Dawaca Holdings as a mortgage broker shall be revoked forthwith;

"(2) The continuing registration of Argosy Investments Limited shall be subject to the terms and conditions set forth in exhibit 3...and subject also to the condition that John David Carnie shall forthwith surrender and give up his share or shares in the corporate stock of Argosy Investments Limited to the treasury of said corporation or assign or transfer same to another person or corporation approved by the respondent."

I wonder whether you could tell me what follow-up or investigation was done after that to ensure compliance with that order.

Mr. Mitchell: To my knowledge, there would be very little or none. Unless something was brought to the attention of the registrar, then he would not look into it any further.

Mr. Philip: Maybe research can refresh my memory. What is the specific date on which Mr. Carnie admits to a court to fraud by conversion?

Mr. Kerzner: Sometime in late 1971.

Mr. Mitchell: It was February 1971.

Mr. Philip: In late 1971, he admits to fraud by conversion. Two years later in late 1973, you essentially sign what is an agreement with him in which he promises--in layman's language--not to have anything to do with the company.

Mr. Mitchell: Yes.

Mr. Philip: What reason would you have to believe the word of a man who is convicted, by his own admission, of fraud by conversion; that he would, in fact, live up to an agreement signed by you, unless you have some way of monitoring it or investigating to find out whether that compliance was carried out?

Mr. Mitchell: In this case, I think you have a registrant, being Argosy. As an administrator, you have reason to rely on the fact that it has undertaken to do certain things and that it is not going to put its registration in jeopardy by having John Carnie present.

It is really not the word of John David Carnie on which we are relying. It is the company, Argosy, and Mr. Walker who are undertaking that he will not be there. Mr. Carnie is not a party to this agreement.

Mr. Philip: You can play word games all you want, but you know that Mr. Carnie is the one who makes the agreement. If Mr. Carnie did not agree to this, then you would not have an agreement. Mr. Carnie was the company; is that not so?

Mr. Mitchell: No. I would not say that.

Mr. Philip: Who was the company then?

Mr. Mitchell: Carnie was one of many players. The person basically up front was David Walker. Looking at the information in the hands of the registrar and looking at it prospectively at the time--it is very easy now to look back and say that he never left, that he was there all the time, but that was not obvious to anybody at that time.

Mr. Philip: So you have suspicions about a company. There is a problem with that company. You know that the principal of that company has been guilty, by his own admission, of fraud by conversion. You sign an agreement with that company and you say, "You may have been a bad boy in the past and you may have been guilty of fraud, but I have every reason to believe you are going to be a good boy in the future because you have signed this paper that says we have got an agreement that you are not going to play in the same ball game again." Do you think that is really responsible on your part?

Mr. Mitchell: I think it is. You are characterizing it quite differently. You are saying that Carnie is a party to this agreement. I say he is not a party to this agreement. Carnie is at no time a party to this agreement.

Mr. Kerzner: But he is subject to the tribunal's order.

Mr. Mitchell: He is subject to the tribunal's order in that if he shows up in the company, the company runs the risk of losing its registration.

Mr. Kerzner: But we know already that Carnie has a piece of Argosy Financial, the parent company, and that the two-tiered operation of parent and sub is essential to the operation they propose to run. All Mr. Philip is saying, "Never mind all the corporate veils; let us look at what is really going on."

Mr. Mitchell: Once again, you are dealing with a piece of

legislation that has certain powers in it. You are taking a matter before a tribunal. At least, you are taking the order to the tribunal to get the tribunal to agree to the order. I believe the order was subsequently filed with the Supreme Court. You are limited as to what you can do with that act.

Mr. Philip: But sir, do you not have the powers to ensure that your agreements are complied with? Surely, under the act, you have that power and it surely would occur to you at some point in time that if you have a signed agreement, it just might be wise to check up and find out whether that agreement is being adhered to.

Mr. Mitchell: That is certainly available.

Mr. Philip: And that is available to you under the act.

Mr. Mitchell: I think it would be available under this agreement.

Mr. Philip: Well, certainly. You are the one who said you have limited powers under the act. You do have investigative powers under the act. Otherwise you would not have had the agreement in the first place.

Mr. Mitchell: That is correct.

Mr. Philip: Having done that investigation, you have reached an agreement. Surely, under any act, the right to investigate and to make an agreement also carries with it, or otherwise it does not make any sense, the right to ensure that there is compliance with that.

Mr. Mitchell: That is correct.

Mr. Philip: But you did not exercise that right to ensure compliance.

Mr. Mitchell: No, not at that time.

Mr. Philip: Did you do it at any time?

Mr. Mitchell: There was no information that came to my attention or to the registrar's attention that would have caused us to enter into any kind of an investigation of Argosy subsequent to this.

Mr. Philip: Were you aware of the connections of Carnie with the parent company or the umbrella company or whatever other technical term you put on?

Mr. Mitchell: We would be aware at some stage; I am not sure at what stage. There became a very large group of companies involved.

Mr. Philip: Would you have been at this stage?

Mr. Mitchell: I do not believe so. At this period of time, Argosy is not seeking public funds to put out into syndications. It is operating in a different fashion. In fact, if you look back at it, I think the operation appears to change quite dramatically commencing about 1975.

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Mr. Philip: You would have known of the existence of the parent company, would you not?

Mr. Mitchell: Yes, there was a parent. We were aware of a parent company.

Mr. Philip: Would it not have occurred to you, or would it not have come up in your investigation of the company under question, to examine its relationship with its parent company?

Mr. Mitchell: We never investigated Argosy per se. We investigated specific complaints and I submit that is as far as we could go; investigating some specific complaints. I do not believe the act permits us to get into the business of other companies, related or not.

Mr. Philip: But at some point when you are investigating the company, surely you ask the question, "Who are these guys?" At that point, surely you become aware of the parent company. What I am asking you for--you really made a mistake, did you not? You signed an agreement with the wrong company.

Mr. Mitchell: I would disagree with that.

Mr. Philip: It is a meaningless agreement because the parent company was in fact the one that had the controlling interest anyway.

Mr. Mitchell: The agreement was signed with the registrant company, and I submit that is the only party we could sign the agreement with; the registrant company.

Mr. Philip: Without any kind of binding on the parent company?

Mr. Mitchell: That is correct, sir.

Mr. Philip: It would be interesting to get another legal opinion on that. Thank you.

Mr. Ashe: Very briefly, I also have a question of the registrar. All the way through, you were talking about, and we have documentation about the renewal of registration on an annual basis and the process and the period of about a year when there was no registration, etc. Then we seem to come to the 1978 renewal, which you refer to, but then there is no information in the file with respect to renewal of AIL's registration in 1979. What does that mean? Would there not be anything in the file? Did it disappear? Was it just so automatic there was no notation?

Mr. Mitchell: There would be something in the file. I believe they were registered in 1979.

Mr. Ashe: Supposedly, but in the review of the file, and this is the extensive report of which you are aware by Shibley, Righton and McCutcheon, very specifically by Mr. Wortzman, on page 37 of his 64 pages--that is tab 22 in the big black book--item 60 says, "There is no information in the file with respect to renewal of AIL's registration in 1979." We have gone through a year-by-year indication of how and why and what problems if any, etc., right until then, and of course that is the year in which the receivership took place.

Mr. Mitchell: To my best recollection, the registration was renewed in 1979. The fact there is not a document in the file for Mr. Wortzman to see--it was not brought to my attention that he was not able to find something

he needed. I think the file does clearly indicate that the registration did expire June 1980, so it follows that it must have been renewed in 1979.

Mr. Ashe: Even in the bundle of documents that was referred to a few moments ago by Mr. Philip, you can go right to the end and the very last page, page 111, talks about the 1978 renewal. Once again, 1979 does not seem to have any reference point. There just seems to be something missing there and I think it would be helpful if you could have your people check the file once again. At least if there was this acknowledgement of the \$25 fee and, "This will serve to confirm your mortgage broker's certificate number;" in this case, in 1978 it was 1006.

I am getting the feeling that there may have been no registration at all effective July 1, 1979. I think there is every reason to draw that conclusion, again based on the report of the total file, and even this. These are your documents. I say yours, but I am not sure who supplied them, yourself, the ministry or whoever.

Mr. Mitchell: I will certainly check that.

Mr. Shymko: You indicated that Mr. Walker was always put up front and that obviously there was no indication that Mr. Carnie really had controlling and sole access to funds because of Walker's name being up front. David Walker was registered on December 10, 1973, when the conditional registration was set up, was he not? The registration of David Walker is the first part. Was it not Walker who was being registered? The conditions were being set on Carnie. We know Walker was up front.

Mr. Mitchell: Yes.

Mr. Shymko: You knew he was up front back in 1973.

Mr. Mitchell: Walker was up front even before that.

Mr. Shymko: Even before that; so it is really a sort of cop-out, is it not, to say that Walker's being up front meant that you or the registrar did not know of the activities and control and power of Mr. Carnie?

Mr. Mitchell: The registrar would be fully aware of Carnie's involvement at various stages, of course, and I submit that he took appropriate action to get Carnie out.

Mr. Shymko: Is it very common to have conditional registrations? Is this a common occurrence, happening with hundreds of registrants every year?

Mr. Mitchell: Yes, it is.

Mr. Shymko: How many conditional registrations would you have per year?

Mr. Mitchell: Today or then?

Mr. Shymko: Let us say today and then how many you had then.

Mr. Mitchell: The registrant population in those days in total, and I am speaking beyond mortgage brokers, might be 30,000. Today it is closer to 80,000.

Mr. Shymko: Of the 30,000 in those days, and I refer to approximately 1973, obviously, how many do you think would have been conditional registrations?

Mr. Mitchell: It is what we call applying terms and conditions to registrations. If the registrant agrees, the registrar can do this at any time, certainly today, and does do it. I do not even know whether I can put a fix on it. It is probably 50 times, maybe 100 times a year; back in those days maybe half a dozen or 10.

Mr. Shymko: So you would have about 10 or 12 conditional registrations in those days?

Mr. Mitchell: I would think so.

Mr. Shymko: Would you say that of those 10 or 12 conditional registrations, Carnie and Argosy were unique in the light of the suggestion not to have a hearing on his record? Was he somehow special? Did he stand out from the remaining 11?

Mr. Mitchell: I do not think so. There could be a number of reasons you go for terms and conditions, not the least of which is that a man may have a criminal record. Let us say that he was convicted five, eight or 10 years ago. You may feel that he meets all the qualifications but you want to keep some control on it. You want to have some leverage, I guess is the best word. It is easier to get him out if he does go wrong.

Mr. Shymko: It is a pretty strong statement when you have the division solicitor--the registrar, never mind the solicitor--and the chief inspector in December 1973 both determined not to allow Carnie to remain with Argosy. That is a very strong and unique position. The conditions attached were that this guy should give up his shares, etc., and any breach of those conditions would immediately mean a revocation of his registration. They were aware of his criminal record. From a layman's simple perspective, I would say that Argosy and Carnie and the whole thing were rather special in 1973, along with the other 10 or 11 conditional registrations. There was a whole thing around it.

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The reason I am asking this question on how many of these conditional registrations you have, normally when renewals come--the renewals in 1974, 1975, 1976, 1977, right up to the last one in June 1979--when you have a conditional registration, is it not reasonable to suspect that you would look especially at these renewals of conditional registrations to check whether there was any breach? Would it be just an automatic stamping and you collect your \$25 fee, stamp it, and out it goes, or do you give a special focus when you renew conditional registrations? There are only a dozen, maybe, in 1973. There may have been 50 or so in 1979. Is it not reasonable to expect the registrar to attach a special checklist or something to see whether the conditions are complied with?

Mr. Mitchell: Let me say first that when conditions are attached to a registration, they usually have a sundown point. They are for a year; they may be for two years. In this case, I believe they were for one year. It was treated as being one year. At the expiration of that period of time, the registrar would look at it. If he wishes to extend the terms and conditions, he properly should go back to the tribunal and extend the terms and

conditions. As a matter of fact, I believe he extended the terms and conditions on this without going back to the tribunal.

Mr. Shymko: Exactly. Would he have been aware that in February 1978, when I think Argosy was applying for the series I debentures, that Carnie's answer in the process of that application, his access to funds for mortgage investments, meant that he had contravened the conditions of Argosy's registration imposed in a 1973 order of the tribunal? Would anyone who checked what was happening in February, March, April and May, prior to the June renewal of 1978, have seen that there was a breach of the 1973 conditions? Would it have been very difficult to have seen and noticed that?

Mr. Mitchell: I am sorry. I am asking a question for a question: Is this when Carnie is applying for registration at the securities commission?

Mr. Shymko: Exactly. After a hearing on August 17, the director had refused to register Argosy as a security issuer or to issue receipts of the series I debenture prospectus, as you will recall.

Mr. Mitchell: Yes.

Mr. Shymko: Argosy appealed and the commission overruled the director's decision. Prior to overruling, there was a hearing. At the hearing, Carnie was asked, "Have you at all times access to moneys coming by way of mortgage investments, moneys going out, etc.?" He said, "I am the only employee who has total access at all times." Just looking at that hearing is evidence that he contravened the conditions set in 1973 and the registrar should not have renewed his registration in June 1978.

Mr. Mitchell: I submit the registrar did not know that Carnie made that--

Mr. Shymko: This is where my question comes in. When you have conditional registration, is it not assumed that prior to renewing a registration you look and investigate a little to see whether conditions have been met throughout the year?

Mr. Mitchell: The conditions on that registration would have disappeared in the renewal in June 1975. The conditions would have been gone.

Mr. Shymko: Oh, you mean these conditions were not applicable any more after 1975?

Mr. Mitchell: I submit they would not be applicable after one year from the date of signing them.

Mr. Shymko: That certainly steals the whole thunder from the Ombudsman's report. I am totally confused. The Ombudsman assumes these conditions were binding right up to 1978. Am I wrong? Am I being misled in my assumptions here?

Mr. Bellmore: Perhaps I could refer to page 61 of the materials you have there, the order or the agreement that became part of the order. Do you see it on page 61 and over on page 62, paragraph 11? The duration of the probationary period is spoken to there.

Mr. Shymko: "Subject to the terms and conditions herein, the registration of Argosy Investments Ltd. shall be renewed during a probationary

period ending December 31, 1974." So the probation, the conditions attached, were for only one year.

Mr. Mitchell: Yes.

Mr. Shymko: And from then on, there was no need for you to check whether or not this man may have been doing any shady dealings or--

Mr. Mitchell: There would be no reason to check, unless, of course, information was received by the registrar or by my office that Carnie was in fact involved. I am not aware that type of information came to us.

Mr. Philip: May I ask a supplementary?

Mr. Shymko: If I may complete, and this is the end, because I am really surprised by that answer.

On page 53 of the Ombudsman's report, and I would like all the members of the committee to look at this, because it is a very strong argument presented by the Ombudsman which, I guess, may be misleading, the bottom paragraph says:

"No evidence was led of Carnie's suitability or of the propriety of his past conduct as Argosy's control person." This is related to that hearing in 1978. "No evidence was presented, for example, of the fact that Carnie's answer about access to funds for mortgage investments meant that he had contravened the conditions on AIL's registration imposed under the 1973 order of the tribunal. Thus the commission...."

The assumption by the Ombudsman in the investigation is that he had contravened the 1973 order and not just during 1973 to 1974, prior to the renewal. Is that the assumption; within the period under section 11?

Ms. Morrison: The paragraph you refer to on page 53 refers to the fact that Carnie, in saying that he had had access to funds throughout, from 1969 onward, had to mean he had contravened the probationary order in 1973.

Mr. Shymko: Even within the period cited under the act, which was the one year?

Ms. Morrison: Sure, because he said he had had access from 1969 onward. So we suggest in that paragraph, and I think correctly, that if he had access to the funds from 1969 onward, he certainly had access during the probationary period.

Mr. Shymko: The registrar, in renewing it in 1974, would not have known of that. The registrar would have found out only in 1978, I guess, that he had contravened.

Ms. Morrison: If he did not check whether the probationary orders were being carried out, that is right.

Mr. Shymko: The registrar answers me there was no reason for him to check, because after the 1974 period, one assumed there was no condition attached any more. This is a classic catch 22.

Mr. Mitchell: The term of the order is, there is a probationary period attached to the terms and conditions. At the expiration of that

probationary period, then the registration is treated like any other registration. Unless there is reason not to renew, it is renewed.

The fact that Carnie had a hearing before the commission in 1978 and made a statement that he had always had access to funds, had that been known to the registrar in 1978, then the registrar may have been able to take some exception to Argosy's registration. But once again, it is hypothetical. I am submitting that the registrar was not aware of any statement made by Carnie to another tribunal.

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Mr. Philip: Supplementary, because I think perhaps by accident you may be misleading the committee. In 1974, was it not a renewal of the 1973 authorization?

Mr. Mitchell: Yes.

Mr. Philip: So the fact is it was renewed then and it was renewed with the same condition.

Mr. Mitchell: In 1974 it was, yes.

Mr. Shymko: But not subsequently. There were no conditions subsequently, it is my understanding.

Mr. Philip: If it was considered so serious to sign this agreement in 1973, to renew it in 1974, if this man then was going to be a threat in 1973, renewed as a threat in 1974 on the conditions, why would he not be the same threat in 1975 and why would that not be a condition then of renewing?

Mr. Mitchell: The conditions were set or agreed to in December 1973. The term is basically one year, which extends over a registration period. So come June 30, 1974 when the registration is required to be renewed, the terms and conditions that were in place in December 1973 carry forward until December. I submit in the next renewal cycle, which would be June 1975, the terms and conditions had disappeared.

Mr. Philip: In 1975 then when you removed those conditions or did not have them in the new conditions, if you want, it did not occur to you see whether or not the conditions had been at least complied with in the two years in which your conditional registration was in force?

Mr. Mitchell: I am not sure how we do that.

Mr. Philip: You might have asked them. You might have looked at the company to find out if he was still involved. You might have found out who in fact really owned the company, whether it was a separate company, whether it was owned by a parent company, who were the principals in the parent company, if any, and if a parent company existed.

Let me give you an analogy. It seems to me that if I am going to remove a condition of a probation of someone who is guilty of whatever, as a probation officer my first criteria would be to find out whether the person, in this case the company, had complied with the probation. You did not do that.

Mr. Mitchell: No. We did not lift the terms and conditions, they automatically expired at the end of one year. There was no administrative

decision made by the registrar here. That is automatic. It has a term.

Mr. Philip: So in the mind of the registrar, it was not right for a self-confessed person guilty of fraud to be involved with the company for one year, but it was okay for him to be involved with it the next?

Mr. Mitchell: These terms and conditions were agreed to for a period of one year. To my knowledge, Carnie was not obviously up front, even after the expiration of those terms and conditions, until he makes this statement at the Ontario Securities Commission in 1978. I submit that admission by Carnie was not known to the registrar.

Mr. Ashe: He was just bragging--

Mr. Philip: I do not know. Either the registrar at that time was extremely naïve or extremely trusting or was not doing his job. I do not know which of the three, but it certainly seems like negligence to me.

Mr. Kerzner: I am sorry; are you done with your presentation? I do not want to--

Mr. Mitchell: Yes.

Mr. Shymko: I have not (inaudible) questions to ask, if I may be allowed. I am looking at the recommendations from the Ombudsman, and I am sure that you are well aware of these. He suggests certain amendments to the Mortgage Brokers Act, whose history you have outlined to us. The major change to the act came in 1971, I believe. Is it presently being reviewed for improvement?

Mr. Mitchell: It is being reviewed at the staff level, yes. The Mortgage Brokers Act was transferred, in March, to the Ministry of Financial Institutions.

Mr. Shymko: So you as a registrar are being involved in making some suggestions or recommendations for improvement?

Mr. Mitchell: I have not been directly involved, no.

Mr. Shymko: But some of your staff have?

Mr. Mitchell: Yes, they have.

Mr. Shymko: Do you see a need for some improvement?

Mr. Mitchell: Clearly there is a need. Today, the biggest problem is mortgage syndications, which may have been started by Argosy. There are estimates of between \$100 billion and \$150 billion invested in mortgage syndications in this province.

Mr. Shymko: You say unless that question of mortgage syndication is addressed in amendments to the act, the same that has occurred with Argosy can still occur now?

Mr. Mitchell: It surely can.

Mr. Shymko: In the recommendation, the Ombudsman suggests there should be a more effective regulation of the industry and the proper

protection of borrowers, lenders, investors, including the syndicated mortgage. Do you agree with that?

Mr. Mitchell: Yes, I do.

Mr. Shymko: Do you also agree with the Ombudsman that the amendment to give you extra powers--in the questioning I had of the Ombudsman, I was told that you have investigative powers now. Is that correct?

Mr. Mitchell: Yes, there are investigative powers and they are fairly extensive. I am not sure that they have to be more extensive.

Mr. Shymko: This is where my question comes in. I do not have the act before me, but my understanding is that the recommendation from the Ombudsman says that you do not presently have or you are not entitled to a power where of your own initiative you may investigate affairs of a registrant.

Mr. Mitchell: That is correct. We must apply either to the director as defined in the ministry act or to the minister for an investigation order, which is fully extensive in its power. Another thing that should be said is that all our decisions, whether it is a registrar's decision or a director's investigation order, are all subject to judicial review. You cannot use the power frivolously. It has been pointed out to us many times.

Mr. Shymko: You seem by your comment to say that one has to be careful when you give personal initiative investigative powers.

Mr. Mitchell: I would say yes.

Mr. Shymko: So you would have reservations about implementing that type of recommendation?

Mr. Mitchell: I think there should certainly be some overview, some checks and balances on that kind of power.

Mr. Shymko: Had the registrar had those self-initiated powers of investigation in 1973-74, do you think things would have been different in terms of investigating the fraudulent operation of Argosy?

Mr. Mitchell: I do not think so. I do not think they would have been any different.

Mr. Shymko: The last recommendation is addressing the whole issue, and this is where the whole of regulatory failure--it is my impression, along with, I am sure, members of the committee, that this may have been a major cause in some of the problems that have led to the whole collapse and the receivership of Argosy; namely, part of the regulatory failure is the lack of co-ordination, communication between the registrar's office and the securities commission. Do you see this as being true?

Mr. Mitchell: Back in those times, I would say that communication was not great; I would agree with that.

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Mr. Shymko: Has there been any improvement?

Mr. Mitchell: There clearly has been. The business practices

division exchanges with the Ontario Securities Commission and the Ministry of Financial Institutions a complete dossier of what we are into and what we are investigating on a monthly basis, the matters we have before the courts and the matters that are before the tribunal. This is a monthly thing. I think we started it in 1981 or 1982, somewhere back there.

Mr. Shymko: So from 1981-82, you see a definite change. It is interesting that you mention 1981 and 1982, following the whole Argosy situation. Do you not think that may have had a major impact in that change?

Mr. Mitchell: I would suggest Argosy, Astra/Re-Mor and C and M Financial Consultants Ltd., yes.

Mr. Shymko: So although there may have been no amendment to the Securities Act and the Mortgage Brokers Act, you felt that whole issue had to be addressed by a regulatory change or some policy decision-making? You had the power to do this before 1981. Could you not have done that in 1975, 1976 or 1978? Why 1981?

Mr. Mitchell: If you go back in time and look at the number of acts administered by the ministry, in those days totalling between 60 and 70 acts, there were a number of repositories of information existing in various areas. Each registrar, if you will, had his own fiefdom, his own client group to register, and there was not a lot of communication between them. I think the whole attitude in those days was that if you have a complaint, then deal with the complaint, try to get it resolved, try to restore the conditions prior to the complaint and get on to the next one. That has changed. Obviously, as regulators we are responsible, and we should be doing everything we can to administer the legislation evenhandedly.

Mr. Shymko: I am sort of hesitating in asking you this last question because I do not know whether it may ask for a personal opinion, but I will ask it anyway.

Do you feel that the role of this committee and the investigation by the Ombudsman, as an institution with a mandate, and what we are doing are a positive step in rectifying things? We have seen changes occurring already, with the whole situation with Re-Mor and Argosy having led to a tightening up within the system, with more communication and other things. Do you think there is an important role that we are playing in the process here, or do you think it is irrelevant and that you can improve things on your own without this process?

The reason I am asking that is that I was quite disturbed when the minister said, and I quote from the Globe and Mail of Tuesday, April 14, "Argosy victims must feel they are on shaky legal ground if they pursued their claim against the government through the Ombudsman rather than through the courts...." It basically says that this whole process is just window-dressing, that they are not going to win anyway, and it may be a nice public relations job for someone.

Do you think we play a role? Do we impact on the operation of your office?

Mr. Mitchell: I guess there are about three questions there. Let me say first that I think the Office of the Ombudsman was a very good move by the government back in 1975 when it was formed. I think it plays a very critical role. I disagree with some of the powers of the Ombudsman. I disagree with

some of the ability of the Ombudsman to arrive at conclusions.

Mr. Shymko: Do you disagree with the standards of interpretation?

Mr. Mitchell: I would want to contemplate that. Certainly there is no question that we all have some feeling of sympathy for investors who lost money. I guess the thing that bothers us most as regulators, as administrators, is that sometimes you are damned if you do and damned if you do not.

For example, back in in 1974, Argosy counsel complained to the minister of the day about the actions of the registrar's office and counsel for the registrar tribunal as being perhaps a little abusive and overbearing. One only wonders whether, had the Ombudsman's office been in place in 1974, Argosy would have complained to the Ombudsman that we were being too hard on it. We are in a position where we clearly understand, more so today perhaps than 10 years ago, that we have a role, and we are responsible for our decisions.

Mr. Shymko: I want to conclude my remarks by saying that the Ombudsman's mandate--what the Ombudsman is trying to do in this committee--and what you are doing is to try to safeguard the public from unscrupulous types of individuals. At the hearing, I think the judge said that the old carnival barker has been replaced in our modern society by the well-dressed, personable, intelligent and articulate businessman who sells dreams that turn into nightmares, that the product is better packaged today and the tactics are more sophisticated but the results are the same.

Basically this is what we are after. The standards may be higher and so on; I appreciate your comments. There has been an impact by Argosy to improve things notwithstanding the Ombudsman's special report or what this committee is doing. However, I would like to hear that what we are doing is going along the same line of improvement that your office has initiated. Hopefully, there will be improvement in the future so we can protect the public from these fraudulent individuals. That is a sort of mini-speech at the conclusion of my questions.

Mr. Ashe: Did I understand correctly that your estimate of the current outstanding syndicated mortgages was \$100 billion to \$150 billion in Ontario alone?

Mr. Mitchell: That is the estimate, sir.

Mr. Ashe: That is a lot of dollars.

Mr. Mitchell: It certainly is.

Mr. Ashe: That is three to five times the provincial budget.

Mr. Shymko: A healthy private sector, George.

Mr. Ashe: That is for sure.

I would like to go back for a moment to the agreement entered into on December 5 and 6, 1973; two different dates depending on the signature, December 5 by the Argosy people and December 6 by the registrar. We talked about the fact that the probationary period expired. There was no action necessary by the registrar to say he revoked something. The agreement expired

December 31. Frankly, I would think that would be quite normal with most agreements. They do not have a date for renewal; they have a date for expiry. We have spent some time there.

Let us go back for a moment to nine. "Argosy Investments Ltd. and David A. Walker shall not hire, appoint or authorize John David Carnie to arrange or deal in mortgages." Was there any indication from December 5, 1973, to and including December 31, 1974, that that condition was being broken?

Mr. Mitchell: There was no indication. I submit that if there had been, the registrar would have taken action.

Mr. Ashe: Is there any record at all in any of the files--I appreciate that in all these volumes there may have been something I missed--of any of the conditions, one through 12, being broken that came to the knowledge of the registrar?

Mr. Mitchell: I do not believe so. There is some reference in the file material that a member of the tribunal had spoken to the registrar by telephone saying he heard a rumour that they might not be abiding by the terms and conditions. That is as far as that went.

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Mr. Shymko: When was that again?

Mr. Mitchell: It would be subsequent to December 1973; probably early 1974.

Mr. Ashe: I remember reading that one somewhere, but it apparently was hearsay and no substantiation or specifics came forward, if I recall it; I have read so bloody much.

Mr. Bellmore: It was November 29, 1974, when that petition was raised by a member.

Mr. Philip: May I ask a supplementary? As to your statement that during this period of time no complaint or information was brought to the registrar's attention that any of the conditions had been broken, is it not fair to say that the only people who would have been concerned about the conditions, indeed the only people who would have probably read the conditions would be the registrar and the company? The company would hardly report on itself and the registrar was not conducting an investigation to find out whether there was compliance, so why would one suspect that anybody would forthcoming saying there was no compliance?

Mr. Mitchell: I believe there was a fair bit of press at the time. In fact, that was part of the complaint by Argosy and its counsel to the minister.

Mr. Mancini: You said to the minister?

Mr. Mitchell: Yes, there was a complaint to the minister of the day.

Mr. Mancini: Who was the minister of the day?

Mr. Mitchell: It was 1974 and likely it was John Clement. It might have been Arthur Wishart. I believe it was John Clement.

Mr. Mancini: What individuals made this complaint to the registrar?

Mr. Mitchell: It was counsel for Argosy Investments Ltd.

Mr. Mancini: Who accompanied the counsel?

Mr. Mitchell: I do not know now.

Mr. Mancini: Would that be on record some place?

Mr. Mitchell: It probably is. It was clearly counsel for Argosy.

Mr. Mancini: What were they appealing?

Mr. Mitchell: No. They were complaining about the actions of our counsel at tribunal. They were working out the consent order and complaining about the actions of an employee in the registrar's office and dealing with the press.

Mr. Mancini: It seems odd that a minister would grant an interview to a counsel and two businessmen because of what the media was writing. Does it not seem odd to you? You cannot just walk into a minister's office and say, "Good morning, I am here to complain about the press." They must have talked about something else. There must have been more to the conversation than, "I am here because I did not like the headline in the Globe and Mail this morning."

Mr. Mitchell: I submit, Mr. Mancini, that they could get to see the minister on that kind of issue.

Mr. Mancini: I have been a member of the Legislature for 12 years and I submit that I differ.

Mr. Mitchell: Having been employed in this government for 30 years, sir, may I submit that it does happen.

Mr. Mancini: They must have had a lot of meetings about a lot of headlines then.

Mr. Mitchell: It depends on the minister.

Mr. Mancini: All joking aside and having arranged meetings for a number of groups who wish to meet with ministers--

Mr. McLean: Harder now than it ever was, is it not?

Mr. Mancini: For us to accept your statement in its entirety that they met because they did not like the press reports--

Mr. Mitchell: No, I submit it went beyond that. I think they were alleging that perhaps there was a breach of confidentiality; perhaps the conduct of a lawyer in a public forum. It would depend on how it was broached to the minister. If he felt it was something urgent, then he would see them. If he were setting up a meeting to sit down and talk to people for half an

hour, it would take longer. If it were an urgent matter and demonstrated to be such, I think he would see them.

Mr. Mancini: There is a lot more I could ask.

Mr. Philip: To follow that up, I refer you to page 33 of the Ombudsman's report.

Mr. Mitchell: Yes, I have it.

Mr. Philip: Would you comment on the memorandum of December 21, 1973? "Two additional complaints...have now been received officially and there is a third one pending." This is 10 days after the tribunal hearing. "These complaints are as bad or worse than any we have received heretofore. Therefore, I would recommend that the following suggestion be made to [AIL's lawyer], namely if he and his client are willing I will agree to a rescission of the consent order and proceed with a new action before the tribunal for revocation of the broker's registration."

Mr. Mitchell: Do you wish me to comment on that memo?

Mr. Philip: Yes. What happened as a result of that?

Mr. Mitchell: I do not know specifically what happened after this. I can assume the complaints precede the order.

Mr. Shymko: The tribunal hearing was December 10.

Mr. Mitchell: I submit the subject matter giving rise to the complaints themselves occurred well before that.

I was not privy to any specific meeting. Normally what would happen is that you would discuss the value of going now to a full-blown hearing. "You have this consent order. The complaints you are talking about preceded the signing of this consent order and we will let the order stand."

Mr. Philip: What I read him saying here is: "You have a consent order, but my goodness, things are even worse than we thought when we signed the consent order. Therefore, we had better look at this again." Is that not what that says?

Mr. Mitchell: I do not read it that way.

Mr. Philip: It says, "These complaints are as bad or worse than any we have received heretofore." The "heretofore" had been the complaints on which the consent order had been based.

Mr. Mitchell: Yes.

Mr. Philip: He is saying, "Things are even worse than we thought when we had this consent order."

Mr. Mitchell: Yes, he is saying they are as bad or worse.

Mr. Philip: That is right. "Therefore, I would recommend that the following suggestion be made...namely, if he and his client"--Argosy Investments Ltd.--"are willing I will agree to a rescission of the consent

order and proceed with a new action under the tribunal for revocation of this broker's registration."

Mr. Mitchell: Yes, sir.

Mr. Philip: That was never done, was it?

Mr. Mitchell: No, it was not done.

Mr. Philip: Can you explain why?

Mr. Mitchell: Sure. First, there is a consent order. To have that consent order set aside, you need agreement from Argosy. Similarly, you have some discussions internally, administratively, on the value of proceeding this way. It was certainly talked about. It would have to be talked about. Obviously, the decision was to let the consent order stand.

Mr. Philip: Was Argosy Investments Ltd.'s lawyer ever consulted on that?

Mr. Mitchell: I do not know, sir. My best guess is that they would not likely have been. The decision to let the consent order stand, that nothing would be gained by going through a lengthy hearing, would have been made internally at the executive level.

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Mr. Philip: So even though, "Things are even worse than we thought they were," the decision was, "We will agree to slapping this company on the wrist and say: 'Carnie is a bad boy. He cannot have anything to do with this company for a year.'"

He is guilty of fraud. Under your ministry, if I had a conviction for the slightest thing, I could not get a liquor licence for my pizza parlour, but here you are giving this guy who has fraud by conversion the right to go out after one year and involve himself in a company that is taking in millions of dollars of senior citizens' lifesavings, and that is okay. Does that not strike you as somewhat ironic?

Mr. Mitchell: No, obviously it is not okay, Mr. Philip. You cannot prevent fraud; you cannot prevent a crime. I do not care who the regulator is and how tight the legislation you have; the only purpose for the legislation is to try to limit that eventuality, because you will have it, and we have it all the time. I have the courts full of people now charged with criminal offences and they were registrants. We cannot prevent that dishonest act. We can certainly try to limit it, but we cannot prevent it. We do not pretend to.

Mr. Philip: You think by not having Carnie involved with the company for one year, you would have prevented it?

Mr. Mitchell: It places some onus on a company. If a company wants to be out there and doing business, and it requires a licence to do business, then surely the company is going to be responsible in that regard. I think we have a right to expect a company will conduct itself properly, particularly if it needs a licence to do so.

Mr. Philip: If your action was to prevent it, you sure as hell did not do a very good job.

Mr. Mitchell: We did not prevent and we do not pretend that we could have prevented.

Mr. Shymko: I find it very unusual. Maybe you could explain this to me. With reference to that particular memorandum of December 21, 1973, I understand that the registrar basically told the executive director the following, "If Argosy agrees, we will revoke their registration."

Mr. Mitchell: No, it says, "If Argosy agrees, we will set aside the terms and conditions, this consent order, and I will go to tribunal. We will vary the whole case and we will go after their licence; we will revoke it." That is the option.

Mr. Shymko: I find it unusual. Obviously, Argosy would not agree to a revocation of its licence. I think it is such an absurd process.

Mr. Mitchell: That is the bottom line.

Mr. Shymko: It is totally absurd. You need the permission of the guy whom you questioned because of these complaints and whom you see is seriously in breach of things in order to have him clean up his act. It is ridiculous.

Mr. Ashe: Was not part of that agreement still on the assumption by the registrar that he was, in his view, on shaky ground in any event in terms of some of the conditions that were being imposed, and that a negotiated agreement--for the sake of a better word--probably gave more protection than with none? I suppose there is always a possibility to go to tribunal if you are guilty or innocent in the context of your licence, and you may end up with a licence renewal and no conditions at all. Surely that was one of the other parts of the thinking process.

Mr. Mitchell: That certainly is a possibility. The tribunal can vary whatever the registrar proposes and insert its own terms and conditions.

Mr. McLean: Should Thorne Riddell not have some cause to be concerned with regard to the audit that was not done? They just looked into it and said it was their understanding that it was just a consolidated statement. Are they not involved more deeply than what we have heard from you?

Mr. Mitchell: That is part of our whole presentation. Thorne Riddell, in its professional capacity and the representations it made on behalf of the company to the regulators, was, to me, in a better position, if you will, to know what was going on inside Argosy. They were in a much better position than any regulator was to know what was going on with Argosy. For them, unless they were perfectly duped--they had to be totally duped to make that kind of a representation to the regulator that everything was okay. Obviously, it was not okay. After the collapse, when people went in to look, it was not okay at that specific point.

Mr. McLean: What about the inspectors who go in periodically to examine the books and statements that have been done with regard to the Argosy company? Would they not have had some indication that things were not just right a year or two before the final problem?

Mr. Mitchell: No, I submit they would not. The best they might have

seen in the registrant's case would be the brokerage, moneys coming through and moneys going out. They could deal only with the broker. They could deal with the registrant. There is no authority in the act to get behind, in other words, to follow that money through into the various syndications. I submit the Mortgage Brokers Act would not permit an inspector to do that. They would have to rely on the books and records of Argosy, the broker, and I submit that would be fine.

Mr. McLean: The board of directors and your auditors, the chartered accountants, appear to have been fairly lax in their overall profile within the company.

Mr. Shymko: Could I have a follow-up on that? I tend to agree with you that the auditors apparently knew much more than was indicated in their official statements. I think all of us will agree that they had some substantial knowledge. Would you say the same thing about the banks, the lawyers and the financial advisers at Argosy?

Mr. Mitchell: I know for a fact that at least one bank was recommending Argosy as a sound investment right up to months before it went down.

Mr. Shymko: At a local level, a branch manager.

Mr. Mitchell: That is true. I think there was a rather large editorial or article lately in one of the Toronto newspapers touting Argosy as a really good investment as well. Yes, counsel for Argosy made representation to the regulators that they were okay as well.

Mr. Shymko: I am sure the Ombudsman realizes as well that there were other factors who were aware of this. This is why there is the suggestion of a 50 per cent compensation. But are you, at the same time, by saying this, exonerating the government agencies totally?

Mr. Mitchell: We are guilty of not communicating. We are not guilty of maladministration or regulatory failure. Yes, we disagree with the assignment of blame by the Ombudsman.

Mr. Shymko: But you do agree that there has been a factor of the government agencies, a subfactor?

Mr. Mitchell: Of course.

Mr. Shymko: What percentage would you attribute?

Mr. Mitchell: Ten per cent.

Mr. Chairman: Are there any further questions?

Mr. Philip: I have a question. I want to follow up on the statement that somehow the auditors, Thorne Riddell, should be aware of that. I refer you to page 28 of the main documents.

Mr. Kerzner: That is in the ministry's two blue binders.

Mr. Philip: It says: "To enable us to express our opinion as to the consolidated financial statements as at December 31, 1978, and for the year then ended but not as to the consolidated financial statements of any interim

period within such year....We are unable to and do not express any opinion on the consolidated financial position as at any date subsequent to December 31, 1978, or on the results of operations for any period subsequent to that date or on any unaudited interim consolidated financial statements."

There is a series of disclaimers in their statement that was filed with the Ontario Securities Commission. They were not doing a forensic audit of any kind.

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Mr. Mitchell: No, they were not. But they are also talking about unaudited statements. I do not think any auditor, any chartered accountant would express an opinion on an unaudited statement.

Mr. Philip: The role of the auditor, namely, Thorne Riddell, was not to do a forensic study. They were not to find out whether there was something wrong. All they were to do was add up the figures and find out if they balanced. They had no way of knowing whether the money that was paid to one company was an adequate secured investment, or any of those other questions that one might reasonably ask of an investigative body, such as the two we have been dealing with under the Ministry of Consumer and Commercial Relations.

Mr. Mitchell: I submit that if an auditor is doing an audit, then he either has to verify his information or he has to put a disclaimer in. In this case, I think they even went a little beyond that.

On page 29, they say: "We have, however, made a review but not an audit of the interim consolidated financial statements of the company referred to above, have read the minutes of meetings of shareholders and directors to October 29, 1979, and have had consultations...made inquiries of officials in the company having primary responsibility for financial and accounting matters of the company as to transactions and events subsequent to December 31, 1978, and on the basis of such procedures, nothing has come to our attention which would give us reason to believe"--and they set down three things.

They said that the unaudited statements "were not prepared in accordance with accounting principles; that such unaudited interim consolidated statements do not present fairly the information purported to be shown thereby; that any material adjustment of such unaudited interim consolidated financial statements is required, or that any adjustments other than those necessary for a fair presentation of the results for those periods have been reflected therein." In fact, they are saying, "We have not done an audit, but based on other reviews we have no reason to question it."

Mr. Philip: I find it interesting that you did not read the next two paragraphs, though, because those are the ones that the securities commission might have been interested in if it had been seriously concerned about this company.

It says: "It should be understood that the procedures and inquiries referred to in the preceding paragraph do not constitute an audit, and therefore they would not necessarily reveal material changes in the consolidated financial position of the company, and in the results of its operations, or inconsistencies in the application of generally accepted accounting principles."

It further states: "This letter is solely for the information of the

securities commission to whom it is addressed, and not to be referred to in whole or in part of the prospectus or any other similar document." In other words, give me a quarter and I will buy you a coffee. That is about all it will buy you. It does not really give you very much.

It says basically, then, "We have checked it and these people appear to be able to add correctly but we do not know exactly what all the figures necessarily mean." Would that be your interpretation?

Mr. Mitchell: Let me say that before today I had not read this specific letter. Let me also say that you will hear from the securities commission people, and perhaps they would be better people to respond to your questions.

Mr. Philip: I simply want to deal with the impression that was left that somehow the Thorne Riddell audit should have come up with more than you people should have if you exercised your investigative responsibilities. I do not think that has been proved if you look particularly at the last two paragraphs of this audit.

Mr. Ashe: Can we hear from counsel now?

Mr. Chairman: Yes, we are ready if counsel is ready.

Mr. Kerzner: Mr. Philip asked you earlier why you could not have checked in the year or year and a half subsequent to December 1973 to see whether the conditions were being complied with, particularly with respect to Carnie. The note I made of your answer was that you answered rhetorically by saying: "How would we do that? How would we be able to do that?" Do I have the note of your answer correct?

Mr. Mitchell: I believe you do.

Mr. Kerzner: Can you tell me why you could not have done it in the very same way your inspector did it in December 1969? If you could turn with me to page 24 of the registrar's documents that we laid out over the lunch hour, at page 24 we are in the middle of the inspector's report of December 11, 1969. This is what he says at the bottom paragraph on page 24 of the material you have:

"The application for registration as a mortgage broker of Argosy Investments Ltd., which has already been entered as exhibit 15, shows Mr. John D. Carnie as a nonactive"--and those are important words--"mortgage broker. The evidence already submitted of cheques showing rebates of brokerage fees to Mr. Carnie and the fact that he looks after collections, delinquency, etc. of the mortgages held by Argosy Investments Ltd. clearly show that this application for registration contains, therefore, a false statement. Said application was signed and sworn to by Mr. David A. Walker as president of the company."

In that period after December 1973, why could you not have gone and looked at the same things, taken a look at cheques, taken a look at who was writing letters to people who were delinquent, maybe had a couple of your staff place cold or dummy calls to Argosy to see whether anybody could get through to Mr. Carnie to see if he was really functioning? Why would the registrar not have been able to do that kind of relatively simple check to ensure that Argosy was adhering to the conditions of the Commercial Registration Appeal Tribunal order?

Mr. Mitchell: First, the inspector is operating under a director's investigation order when he does his thing, okay? Therefore, he has some very clear access. He has legislated access to whatever he wants to see in the Argosy office.

I guess the bottom line is that, yes, the registrar may have had an entrée to get in, but he did not feel he had to get in, he did not feel he had a reason to go in. I think that the consent order itself, just to ensure that it is being complied with, may have given him access. In fact, although I believe the consent order looked for and said something about complaints--if there were complaints, he could access through the complaints. There is a specific paragraph, if I recollect.

In answer to the question you are asking me, yes, the registrar probably could have found a way to get in, had he deemed it necessary to get in.

Mr. Kerzner: It would not have been a difficult job to ascertain whether Carnie was still functioning?

Mr. Mitchell: You might have uncovered that, yes.

Mr. Kerzner: The act itself at the time entitled the registrar to deny registration, for example, where "the past conduct of the applicant affords reasonable grounds for a belief that he will not carry on business in accordance with law and with integrity and honesty."

Mr. Mitchell: Yes.

Mr. Kerzner: I take it you would include within "integrity and honesty" living up to an agreement made with the registrar?

Mr. Mitchell: I am sorry; I missed the--

Mr. Kerzner: I take it you would include within carrying on business "with integrity and honesty" the matter of living up to any agreements that a mortgage broker makes with the registrar?

Mr. Mitchell: Yes.

Mr. Kerzner: Section 23 of the act gave the registrar the power to designate someone in writing to "enter upon the business premises of the registrant to make an inspection to ensure that the provisions of this act and the regulations relating to registration are being complied with."

Mr. Mitchell: Yes.

Mr. Kerzner: Was that not an open door--if he had any doubts about having an open door--to the registrar at least to have checked to see whether Argosy, during that year or year and a half, was complying with these conditions, particularly the one concerning Carnie?

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Mr. Mitchell: Are you not suggesting that he go fishing? In order to get an investigation order, it generally requires an affidavit. Am I right?

Mr. Kerzner: I am not talking about a minister's investigation order. That is section 25. I am talking about section 23, which says, "The

registrar or any person designated by him in writing may at any reasonable time enter on the premises of the registrant to make an inspection," not where he has reasonable ground to believe that someone is not complying with the act. He has an absolute, unfettered right to send somebody in at any reasonable time to ensure that the provisions of this act are being complied with.

Mr. Mitchell: Yes.

Mr. Kerzner: That is to go and look to ensure that they are being complied with.

Mr. Mitchell: Yes.

Mr. Kerzner: Was that not an open door for the registrar to have at least made one check during the 12 or 18 months following the CRAT order? Do you agree with that?

Mr. Mitchell: I agree.

Mr. Kerzner: Is it also fair to say that if the registrar did not get a complaint about something, his presumption was that things were okay?

Mr. Mitchell: I think that is also a fair statement.

Mr. Kerzner: Is it fair to say, therefore, when we consider whether the registrar was regulating mortgage brokers, that if there was no complaint made, there was, in fact, no regulation going on?

Mr. Mitchell: If there was no complaint made?

Mr. Kerzner: If there was no complaint made, he was not regulating the conduct of the mortgage brokers or ensuring their compliance with the act.

Mr. Mitchell: That is certainly one facet of it and that is one way of characterizing it. There would be less in those days, but there would be some what we would call initiative or routine inspection. There would not be a lot of it but, surely, if a person has a licence, you do not hear from him, you do not hear from anyone else, then you assume everything is okay.

Mr. Kerzner: Can we look at the bundle of documents that we reproduced? I want to be sure we understand correctly what the registrar knew, when he knew it and what, if anything, he was doing about the views as he was expressing them. On page 1 we have the initial, original application for registration in which John David, to be distinguished from his father, John Carnie, is clearly shown as being a player in Argosy Investments Ltd.

Mr. Mitchell: That is correct.

Mr. Kerzner: Then on page 2 it is clearly disclosed that every single shareholder of Argosy Investments holds in trust for Argosy Finance. Is that right?

Mr. Mitchell: Yes.

Mr. Kerzner: That would tell the registrar that the real controlling entity behind Argosy Investments is not its shareholders but is Argosy Finance and the people who control Argosy Finance. Correct?

Mr. Mitchell: That is correct.

Mr. Kerzner: If it was important to the registrar to know who the shareholders and controlling players were in a mortgage broker, why would he not be interested in knowing who were the controlling shareholders or players in the parent company, where the parent owned 100 per cent of the shares of the mortgage broker?

Mr. Mitchell: He may or may not be interested. Once again, he is licensing a corporate entity. It is that corporate entity that must respond. It is that corporate entity that has the responsibility under the act, not a parent, not a subsidiary. It is not necessary that he go behind that. I would suggest that today it is gone behind, but in those days, it probably was not.

Mr. Kerzner: I take it the reason he wanted to know who the shareholders of the mortgage broker were was that he wanted to be sure the wrong kind of people were not shareholders in the mortgage broker; right?

Mr. Mitchell: That is true.

Mr. Kerzner: If everybody holds for the parent company, why would he not be interested to discover whether the world's greatest fraud artist--never mind Mr. Carnie; say there had been somebody even worse in this picture. Why would he not have been interested in knowing whether the world's greatest con artist was the 100 per cent shareholder of Argosy?

Mr. Mitchell: I do not know what he knew in those days. Maybe he did know who was totally behind Argosy.

Mr. Kerzner: There is nothing in the file that has been produced to us, and I take it nothing in the file that you have seen in the registrar's office, that indicates that they knew who was behind Argosy. Is that fair?

Mr. Mitchell: I will accept that.

Mr. Kerzner: Let us go to page 6. This is the first renewal. Our friend Mr. Carnie does not appear anywhere on that one. If we go over to page 7 we see the triggering letter that leads to the December 1969 inspector's report. That starts at page 8. I want to take a look at a couple of pages there. We have already covered the reference on page 24, which is the first of the ones that I wanted to deal with. That indicates that Argosy had made a false statement on its application because it showed John David as being a nonactive broker or officer or director, when in fact he was very active. Is that a fair reading of that last paragraph on page 24?

Mr. Mitchell: I think that in his investigation, the inspector highlighted, did he not, that Carnie was in fact active?

Mr. Kerzner: No. I am emphasizing the other part of it, that the message he was delivering was that Argosy had made a false statement in its application. Is that not the message that paragraph delivers?

Mr. Mitchell: Yes.

Mr. Kerzner: Then if you go to the next page, the last paragraph, he also indicates, does he not, that Argosy had also been a deliberate and knowing party to false declarations on statement of mortgage forms, in that it knew that a brokerage fee payable to Drayton was always intended to be split,

50 per cent to Mr. Drayton and 50 per cent to Argosy Investments, in the person of either Carnie or Walker?

Mr. Mitchell: Yes.

Mr. Kerzner: If you go over to page 26, does the inspector here, under the heading "Argosy Finance Co. Ltd.," not lay out for the registrar this device of the parent that takes the money in and the subsidiary that shovels it out: "This is a public company existing for the purpose of obtaining money which is to be loaned to its wholly owned subsidiary, Argosy Investments Ltd., in order to achieve a profit by lending money to the public on a security of chattel mortgages, against which there is to be collateral security of real property. A copy of the prospectus of this company is attached."

Then over on page 27, about the middle of the page, he concludes: "In my opinion, the shareholders of this company"--speaking of the parent--"probably do not realize the risky nature of the mortgages being taken by Argosy Investments Ltd., and Mr. John D. Carnie and Mr. David A. Walker both admitted in their statements to me that the shareholders were not aware of the brokerage fees being taken by these two officers. They did, however, feel that the other directors of both companies probably were aware of the split fee arrangement."

Then he concludes with this: "It might be advisable that the securities commission be informed as to the findings of this investigation regarding the Argosy companies." I take it from what I have seen of the documents that the registrar has produced, and I take it that you can find nothing that indicates that information was ever in fact passed to the securities commission.

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Mr. Mitchell: That is correct. I also think it should be qualified that what we are talking about here is preference shares of Argosy.

Mr. Kerzner: This was the 1971 rights offering that somebody talked about earlier in these proceedings, but we are clear that it was not passed on to the securities commission.

Mr. Mitchell: I have no information that it was.

Mr. Kerzner: No reason is given in the file as to why it was not passed on as recommended by the inspector.

Mr. Mitchell: No reason.

Mr. Kerzner: Then on page 33, he reports the charges against Mr. Carnie. At that point, the registrar would be pretty fully informed, would he not?

Mr. Mitchell: Yes, he would.

Mr. Kerzner: Then you go to page 36. This is the July 1970 renewal and John D. Carnie is still shown as a participant.

Mr. Mitchell: That is correct.

Mr. Kerzner: Is there any indication in that form as to whether he

is active or inactive? I could not find that information. Is that no longer a required disclosure?

Mr. Mitchell: The renewal document is slightly different from an application for registration. I think there is less information required on a renewal document. In any event, he certainly is shown here as a vice-president.

Mr. Kerzner: Let us go to page 39. This is the registrar writing on July 9, 1971. Let us see if we can keep the days of July straight because I think they become important in this piece.

On July 9, 1971, Mr. Simone writes to Mr. Walker, who is described by you as being the upfront person at Argosy. He goes on and indicates that the annual registration renewal for Dawaca: "indicates that you continue to employ J.D. Carnie, whom we understand recently pleaded guilty to 'conspiracy to commit fraud.' In the circumstances, I am not prepared to continue your registration as a mortgage broker," and I think here are the important words, "because I do not think it is in the public interest that Mr. Carnie be employed by a mortgage broker."

Is he not saying there very clearly that the registrar does not think that Mr. Carnie should be employed by a mortgage broker; not necessarily just by Dawaca, but by any mortgage broker?

Mr. Mitchell: That is correct.

Mr. Kerzner: Is that not what he meant?

Mr. Mitchell: I assume so, yes.

Mr. Kerzner: All right. If you would go to page 40, you told us earlier that Argosy's previous registration had lapsed because the lawyer filed late. The registrar was not prepared to extend so it had to apply again. Is this not the new re-application on August 16, 1971?

Mr. Mitchell: They are dealing with two separate mortgage brokers here.

Mr. Kerzner: I appreciate that, but did you not tell us that Argosy's registration had lapsed in the summer of 1970 because it filed the renewal late, that the registrar would not renew and so Argosy had to reapply as if it were doing it all over again?

Mr. Mitchell: Yes. In fact, I believe the registrar wrote a letter to Argosy saying, "I note you have Mr. Carnie."

Mr. Kerzner: "And you had better disclose Mr. Carnie's criminal conviction."

Mr. Mitchell: Yes.

Mr. Kerzner: If I recall, I think that is at page 38 of the material. I had skipped over that one. That is on page 38 at the beginning of the third paragraph. But this is the new application from Argosy, and the date is August 16, 1971. Is that right?

Mr. Mitchell: Yes.

Mr. Kerzner: That is roughly six weeks after he wrote Mr. Walker to say that John David ought not to be employed by any mortgage broker. Is that correct?

Mr. Mitchell: Yes.

Mr. Kerzner: What we see here is the name John Carnie with the word "Senior" written after it. So we see John David's father appearing for the first time within six weeks of the registrar having written his letter saying that John David ought not to be associated with any mortgage broker.

Mr. Mitchell: Yes.

Mr. Kerzner: The corporate returns, filed on June 5, 1972, by Argosy Investments Ltd., disclose that John Carnie, the father, had been appointed and first became a director of Argosy Investments on July 11, 1971. That is two days after the registrar writes Mr. Walker saying that John David should not be employed by a mortgage broker. While I appreciate that the corporate registration form is filed in a different place, at 555 Yonge Street, and was filed in June 1972, would that not, had the registrar checked, raise some suspicion as to whether Carnie, the father, was really fronting for Carnie the son?

Mr. Mitchell: That, I submit, happens fairly regularly. Somebody is ordered out, and somebody else comes in. They are treated as different persons. Nobody is his brother's keeper.

Yes, the timing of it--Obviously, he had to get out and he wanted somebody in there. At least he could trust his own father.

Mr. Kerzner: Or somebody who would do his bidding.

Mr. Mitchell: That is another way to read it.

Mr. Kerzner: Why would the registrar not be suspicious that all that had happened was that there had been a change in form and not in substance?

Mr. Mitchell: Once again, we are dealing with the conduct of John David Carnie; we are not dealing with the conduct of his father.

Mr. Kerzner: Should he not, in your view, at least have satisfied himself that the substitution was a genuine one in the sense that the father was truly becoming the director and would make the independent decisions for Argosy rather than simply doing his son's bidding?

Mr. Mitchell: Yes, questions could have been asked of Mr. Carnie. Once again, what happens in the day-to-day administration of the act is that counsel are very often involved in these decisions. I can only hypothesize that if the registrar were not satisfied with Carnie's father in there and tried to go to the tribunal on that basis, he would be wasting everybody's time.

Mr. Kerzner: But why not conduct another one of these inspections that the act allowed him to conduct to see whether Carnie senior was really acting independently or whether he was simply doing his son's bidding?

Mr. Mitchell: It could have been done.

Mr. Kerzner: Go to page 48, if you would. I take it that this indicates that the registrar was advised that someone thought that Wilcar, J. D. Carnie's company, was acting as a mortgage broker. May I take it that no follow-up inspection, no investigation was done to ascertain whether Wilcar, a company in which John David held at least 50 per cent of the shares, had been acting as an unregistered mortgage broker?

Mr. Mitchell: There was something at a later date on that. I believe the Ombudsman was critical of the registrar on that. He did not seem to act on this information. The memo was to no one other than, likely, to file. The registrar, in a later action, did refer to this information but not specifically in this form. It was as if he had heard it for the first time. Our best guess is that the registrar was not made aware of this specific information at the time the memo went into the file.

1620

Mr. Kerzner: Can you go to page 53? This reports on a meeting concerning a particular complaint that had been made. Then in the very last paragraph, the registrar indicates, "During the interview it came out that Carnie junior is still working for Argosy against our express request and Walker's undertaking not to employ him with Dawaca and our implied request that he not employ him at all."

Mr. Mitchell: Yes.

Mr. Kerzner: At that point, the registrar knows that what he asked be done in July 1971, and the apparent impression that Carnie senior was on the scene and Carnie junior was gone was, in fact, misleading. Correct?

Mr. Mitchell: Correct.

Mr. Kerzner: And that for the past two years, Argosy had been practising some form of deception, at least on him.

Mr. Mitchell: That is correct.

Mr. Kerzner: Can we go next to page 65, which takes us to the Commercial Registration Appeal Tribunal proceeding? Would you go first to the conditions that are attached, which set out the agreement made between the registrar and Argosy? We have already had reference to paragraph 9. That is simply consistent with the position the registrar had taken for two and a half years, that Carnie not be associated in the mortgage business. Right?

Mr. Mitchell: True.

Mr. Kerzner: Then if you go back to page 66, you will see the addition of this term, that "John David Carnie forthwith surrender and give up his shares in Argosy Investments Ltd." From your experience with the CRAT, I take it it is fair to say that this additional provision arose as a result of some concern expressed by the tribunal that the agreement, as made, did not go far enough to protect the public interest and that it arose as a result of some suggestion initiated by the tribunal.

Mr. Mitchell: That is certainly possible.

Mr. Kerzner: Does the file indicate who it was who either gave the tribunal the information or thought there was any practical utility to getting

Carnie to give up his shares in the subsidiary without giving up his shares held either directly or indirectly in the parent?

Mr. Mitchell: I cannot answer that.

Mr. Kerzner: We talked a little earlier, during questions from members of the committee, about the probation being in effect for only one year. While the probation may have been in effect for one year, are you suggesting that the surrender of the shares was intended to be temporary, for only one year, and then they were to be handed back?

Mr. Mitchell: I think that is the reading placed on the consent agreement by division counsel.

Mr. Kerzner: That is the consent agreement. I am now dealing with what the tribunal added to that. Their words are "surrender and give up," not transfer away for a year or deposit with someone else. Did the registrar not think there was some intended permanence to that action?

Mr. Mitchell: It certainly appears that there are two separate documents. The tribunal has ordered Carnie to surrender his stock in Argosy Investments.

Mr. Kerzner: Mr. Mitchell, if the condition in paragraph 9 of the agreement that is made part of the order was only intended to be operative for a year, why would the registrar have been content to have someone about whom he has already expressed the view "should not be employed by any mortgage broker"--why would he have been content to agree to let that kind of person come back in the business a year later without any evidence of any form of rehabilitation?

Mr. Mitchell: I guess this is the first time he has been able to formally nail down the registrant, Argosy Investments, to an agreement for a period of one year. Up until this point in time in dealing with Argosy he is saying: "We do not think Carnie should be there. If you do not take Carnie out of there, I am not going to renew the registration." Now he has it formalized, Carnie is out for this period of time.

You say Carnie had shown no evidence of rehabilitation.

Mr. Philip: That is not what he said.

Mr. Kerzner: I am saying in regard to the registrar, if your interpretation is correct, if he intended that Carnie's lack of association only be continued for another year, then having expressed the views that he did about Carnie in 1971, why would he be content to take him back without insisting on some satisfactory form of evidence of rehabilitation?

He either threw away what he believed for the last two or three years or he really intended paragraph 9 to be a permanent dissociation which would be consistent with the position he had taken for two and a half years. If he did only intend the thing to last for a year, throwing away what he believed in in the past, if that is what he had intended, would he not have also, acting prudently, have insisted on some evidence that this scallywag had reformed?

Mr. Mitchell: What I do not know is how much information the registrar specifically had about Carnie. The conviction in 1971, while it certainly causes the registrar some concern, I do not know how long he carries

that over Carnie's head. Clearly, a conviction does not necessarily preclude somebody from operating in a business, but they will normally operate under terms and conditions if they are going to operate. The registrar has taken the extreme position, "I do not want him in." Perhaps the registrar did feel that this effectively took Carnie out, period, but the interpretation placed on it by counsel clearly was, "No, it is one year."

1630

Mr. Kerzner: If you look at page 57, which is a letter he had written to Argosy's solicitor about a month before the CRAT proceedings, at section 3(b), under the heading, "John David Carnie," he says: "I cannot permit him"--John David--"to be employed or otherwise engaged by Argosy by reason of his past conduct including a criminal conviction." At least up until November 1973, he had very broad concerns and a firm, fixed view of what the public interest demanded in respect of John David Carnie and the mortgage business.

Mr. Mitchell: Yes.

Mr. Kerzner: Maybe he was told something, but in terms of what is in the file, either by way of documents or a memo from him that would record what he had been told, may I take it there is nothing in the file to indicate what made him change his mind, if indeed he did change his mind? In terms of new information, new insights, the file discloses nothing. Is that correct?

Mr. Mitchell: To the best of my recollection, it does not disclose it.

Mr. Kerzner: If we can go to August 1975, at page 75, the registrar is again dealing with a complaint dealing with pre-December 1973 mortgages, but on page 76 the complainant indicates he was dealing with a certain Mr. Carnie. Although he does not indicate whether it is Carnie senior or Carnie junior, he does indicate they are dealing with the collection of delinquencies, which, at least in 1971 and in 1973, the registrar knew David Carnie was doing.

Then if you go over to page 87, where the registrar records to the file an interview with this complainant, on page 88--this is the registrar talking--he says he had phoned Argosy, looking to talk to David Walker about this problem. "I then phoned Argosy and in David Walker's absence spoke to David Carnie who is handling the matter and he advised me that they are not interested in the property...." So at the very least, by August 1975 he is once again told that David Carnie, the son, is either back in the saddle at Argosy or maybe never left it. He has that information then, does he not?

Mr. Mitchell: Yes, and it is quite possible that is--well, it is quite possible that is John David Carnie and not David Carnie, the father, but I also suggest that in August 1975, when he gets the complaint, the date of the complaint--the activity alleged predates the consent order. When the registrar gets around to calling Argosy and speaks to one David Carnie, it is now--the consent has expired. It has since expired.

Mr. Kerzner: Is there anything in the file that tells us why David Carnie now is an acceptable person to be associated with a mortgage broker?

Mr. Mitchell: I say once again that the term keeping Carnie out, the consent order, goes a year. Carnie was not a party to the agreement; clearly, Walker and Argosy were. That having expired, that one year having passed,

counsel to the registrar said: "Well, that's it. There's nothing you can do about it. If he's back in, he's back in, unless you get more evidence and you want to proceed in a new fashion here."

Mr. Kerzner: Was that advice recorded in writing by counsel to the registrar? I have not seen that particular advice recorded anywhere.

Mr. Mitchell: I know I was party to some conversation around this period about Argosy. I cannot specifically recall what conversation; it was 12 years ago. I was certainly aware of the registrar's unhappiness with John David Carnie. That was made quite clear to me.

Mr. Kerzner: So that there is no doubt about Carnie senior and Carnie junior, is it not a fact that senior's name was John Carnie and he was known as John, and junior's name was John David Carnie and he was known as David Carnie? Is that not right?

Mr. Mitchell: No, John Carnie was senior, John David Carnie. Then there is a John David Carnie Jr.

Mr. Kerzner: What did John David Carnie Jr. have to do with Argosy? I have not found his name mentioned in any--

Mr. Mitchell: No, you have used junior. Junior is John David Carnie's adult son.

Mr. Kerzner: Then let me put it differently. John Carnie, the father, was known as John, and his son, John David Carnie, was known as David Carnie. Is that not right?

Mr. Mitchell: That is correct.

Mr. Kerzner: So there is no confusion between John Carnie and David Carnie.

Mr. Mitchell: There should not be.

Mr. Kerzner: All right.

If, in fact, it was as clear as you say it is that John David was entitled to be back, why was it that Argosy was not showing John David Carnie?

Mr. Mancini: We understood everything before that last exchange.

Mr. Kerzner: Why was it not being shown that John David now was back in Argosy, until at page 105 we come to the June 1978 application for renewal, which was the first application for renewal that followed the hearing before the Ontario Securities Commission in February 1978, when John David disclosed that he had been in the saddle and had access to all the mortgage funds since 1969?

Mr. Mitchell: You ask "why?"

Mr. Kerzner: Do you think it is just a coincidence?

Mr. Mitchell: Once again, employees of a mortgage broker are not required to be licensed or registered. That is not to say he cannot work in the company and, in fact, hold some managerial post in the company. I guess it

would--or should--prevent him from arranging mortgages but not prevent him from being employed in the company.

Mr. Kerzner: Do you agree that if the registrar believes that someone who will not act with integrity or honesty is either a major principal or the controlling principal of a mortgage broker, that is sufficient ground for him to either revoke a licence or refuse to renew a mortgage broker's licence?

Mr. Mitchell: Of course.

Mr. Kerzner: And it was so since 1971.

Mr. Mitchell: That is correct.

Mr. Kerzner: If the registrar of mortgage brokers really believed what he said he believed about John David Carnie, why did he not act on that belief after December 1973, up until March 1980?

Mr. Mitchell: He did take what action was available to him, coming up to the consent order.

Mr. Kerzner: I am talking about after the consent order and up until March 1980. Why did he not act on the beliefs he held, bearing in mind that he had the power to revoke or refuse to renew, and do battle with Argosy over John David Carnie?

Mr. Mitchell: There would be some options open to the registrar. It would depend on what evidence he had and what evidence he had dealt with at any previous time. Knowing the registrar, I do not believe there was any absence of his will to do such a thing. Once again, he was taking some advice as to what he had and what evidentiary package he could put forward. I do not think Carnie had applied for registration himself. He was shown at one time as employed by Argosy. Then he disappears from that employment position. The registrar then gets Argosy to undertake not to have him trading for them. Then I do not think that Carnie himself shows up. As you say, it is later on in the 1970s when he shows up. Whether or not the registrar would be justified in reaching back to a criminal conviction in 1971 that he has had knowledge of for all these years and using that as grounds to keep him out--

Mr. Kerzner: How about the failure to adhere to the agreement that was made in December 1973 for the roughly 18 months that it did stay in force?

Mr. Mitchell: But I suggest to you the registrar was not aware of Carnie's admission or boasting or whatever before the securities commission that he was in fact there at all times.

Mr. Kerzner: Those are the questions I have.

Mr. Chairman: It being past 4:30 p.m., the committee now will rise.

Mr. Philip: Mr. Chairman, before you do that, I am sure all members remember that we start at 9 a.m. tomorrow.

Mr. Chairman: We will begin our meeting tomorrow morning at nine o'clock.

The committee adjourned at 4:41 p.m.

STANDING COMMITTEE ON THE OMBUDSMAN

ARGOSY FINANCIAL GROUP OF CANADA LTD.

WEDNESDAY, APRIL 15, 1987

Morning Sitting



STANDING COMMITTEE ON THE OMBUDSMAN

CHAIRMAN: McNeil, R. K. (Elgin PC)

VICE-CHAIRMAN: Sheppard, H. N. (Northumberland PC)

Bossy, M. L. (Chatham-Kent L)

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McLean, A. K. (Simcoe East PC)

Morin, G. E., (Carleton East L)

Newman, B. (Windsor-Walkerville L)

Philip, E. T. (Etobicoke NDP)

Shymko, Y. R. (High Park-Swansea PC)

Substitutions:

Ashe, G. L. (Durham West PC) for Mr. Sheppard

Offer, S. (Mississauga North L) for Mr. Morin

Clerk: Decker, T.

Staff:

Kerzner, T., Legal Counsel; with Perry, Farley and Onyschuk

Evans, C. A., Research Officer, Legislative Research Service

Witnesses:

Individual Presentations:

O'Reilly, M. D., Legal Counsel to Argosy Investors; with Weir and Foulds

Mazurek, P. J., Legal Counsel to Argosy Investors; with Stanley M. Tick, Q. C.

Berger, E. T., Argosy Investor

From the Ministry of Consumer and Commercial Relations:

Bellmore, B. P., Legal Counsel; with Lockwood, Bellmore and Moore

Mitchell, D. L., Director of Consumer Services; Former Director, Investigation
and Enforcement Branch, Business Practices Division

From the Ontario Securities Commission:

Beck, S. M., Chairman

Salter, C., Vice-Chairman

From the Office of the Ombudsman:

Boothby, P., Assistant Director, Investigations

Anisman, Dr. P., Legal Counsel; with Goodman and Carr

LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON THE OMBUDSMAN

Wednesday, April 15, 1987

The committee met at 9:06 a.m. in room 151.

ARGOSY OF CANADA FINANCIAL GROUP LTD.
(continued)

Mr. Chairman: Members of the committee, now that we have a quorum, we will begin our meeting. The first witness will be Mr. O'Reilly.

Mr. O'Reilly: Mr. Chairman, as I said on Monday, for the last seven years I have represented the syndicate investors in respect to the receivership. On Monday, I believe it was Mr. Ashe who asked what the recovery to the Argosy investors would be from the receivership. I have prepared for you a statement, which should be in front of you, outlining the eight projects in which there was a recovery in total in excess of \$2 million. In addition, there were collateral mortgages--these wraparound mortgages--in which there was a recovery of some \$500,000. So the total recovery was a little more than \$2.5 million. Some of them, you will see, recovered entirely. A small group of investors was fortunate enough to invest in a project in which there was a full recovery; that only represented \$200,000.

The other major project was Prolan, which you have probably heard about from time to time. There was a 38 per cent recovery in that project.

With respect to the investors, as I said on Monday, I only intend to give you a very brief profile of these individuals. I feel it is important, since of course this is a discretionary matter, that you know who would be the beneficiaries of your discretion.

I presented a brief on Monday, which you have had an opportunity, presumably, to go through. Who were these people? The Ombudsman put in an analysis of the complainants he received. I think there are about 268 of them. I would certainly say that it does reflect my observation of who they were as well when we look at age groups, although I would probably have come to the conclusion that the age group was higher than that. That may be only because those are the people who called me over the last seven years and those are the people who appeared to respond to me for this hearing. For example, he says the oldest person was 90. The oldest one I had was 96 at the time when they invested their money, and of course they have died since that time and are represented by their children.

These people came from all walks of life. Some people had worked in factories and saved their pennies and saw this as a reasonable investment. Some of them were fairly well-to-do and saw this as a registered retirement savings plan or simply a good investment.

I wish to emphasize that these people were not motivated by greed, nor in my opinion did they enter into these investments recklessly. The suggestion has been made by some of the press from time to time, that all we had were people who were looking to get rich quick or who did not care what sort of investment they put it in.

My research certainly has revealed that is just not the case. Time and again people outlined how they got involved with Argosy. Generally, they

responded to ads in the newspapers which simply solicited money for an investment. They did not blindly send in their money in response to an ad. They actually went to Argosy's offices, which apparently were very impressive, professional-looking offices. They had very professional operators--if I can call them that--employees who were very knowledgeable about the mortgage business and put on quite a pitch to the particular investors.

These investors again were not people who simply said: "There is my money. Do with it what you will." When they put their money in, nine times out of 10, they were putting it in on a particular mortgage. They had been sold on a particular project, a particular piece of property. They had been told that this was going to be an apartment building or actually was an apartment building and that their money was required for refinancing or for upgrading of the particular properties.

In other cases, they were told this was development land and the potential for this property was great; it was going to be a subdivision or it was going to be an apartment building. They had a full pitch put to them as to what their money was going to go into, and it was on the strength of those representations that they put the money into the projects.

That was not the only thing they did. They also made inquiries of organizations. Not all of them made all the same inquiries, of course, but I have letters outlining that people checked with the Better Business Bureau, with Dun and Bradstreet and actually with the government--I do not know how far they went, whether they checked with the ministry, whether they checked with the Ontario Securities Commission or whether they checked with the registrar of mortgage brokers. Some of them said they made one or more of those particular inquiries.

Some said they actually checked with the Montreal Trust Co.; I presume those would be the ones who put their money into registered retirement savings plans. Some checked with the Canada Trust Co.; presumably those would be the debenture holders. Very many of them had either checked with their bankers or, in fact, had been referred by their bankers to this investment.

As I say, emphasizing that most of these people were over 50 and more of that group were probably over 60, they tended to rely to a great extent on bankers for that kind of financial advice. They wanted to know what they could do with their life savings as a hedge against inflation, which you will recall was galloping in the late 1970s. They were terribly concerned that their pensions would not be covered by the cost of living and they wished to hedge their small amounts or even their large amounts of savings against that inflation.

They received a great deal of comfort out of Argosy by reason of Argosy's association with the Montreal Trust Co., the Canada Trust, the Royal Bank and something else that has not been mentioned to date to any degree, London Loan. Argosy in effect was an owner of London Loan. It traded on London Loan. Its ads showed that it was a member of the Canada Deposit Insurance Corp. and therefore the moneys would be protected. That association with London Loan washed over to Argosy. I know a number of the investors thought their loans in Argosy were similar to a London Loan investment, which would be protected by the CDIC. Of course, that just was not true.

So with all the various organizations that seemed to give their blessing to Argosy, these people were lured, given the comfort that the money they were putting up was certainly safe. The bottom line is that they felt the

government, in regulating such organizations as this, was also giving them that added protection.

As far as the greed aspect of it is concerned, there is absolutely nothing that would indicate these people were receiving usurious interest rates. They were getting a little higher rates, certainly. They were getting, on the average, 13 or 14 per cent in 1979. In 1979, my recollection is that guaranteed investment certificates were around 12 per cent. So this was not something that was an extraordinarily high amount of interest that should put a person on the qui vive. No, it just looked like a good, sound investment in real estate; and that was the emphasis that Argosy made all the time, that this was real estate. We have heard the old saw many times that they are not making any more real estate so it has to be a pretty good investment, and that was certainly the impression these investors got.

Mr. Ashe: On the recovery sheet, have these recoveries been disbursed?

Mr. O'Reilly: No, sir.

Mr. Ashe: These are still in the hands of the receiver then.

Mr. O'Reilly: They will be disbursed probably within the next month or two. The receiver is preparing his final report embodying these figures and will be going to court for the approval of the distribution and his fees.

Mr. Ashe: Do you know if this is net of his fees?

Mr. O'Reilly: Yes, it is.

Mr. Ashe: If I understand correctly then, those who had bought a specific investment in 887, Army-Navy, will get 100 per cent?

Mr. O'Reilly: They are gone.

Mr. Ashe: Okay. Are there any situations where people made a specific investment on a given day and it was split up, in the sense that they put \$3,000 in here, \$5,000 in here and \$2,000 in here, for example, if they invested \$10,000?

Mr. O'Reilly: Not in quite that manner. What happened was that they thought they were going into investment X and they were shuffled out to investment Y. They were not carved up into different pieces. All their money stayed in one project, and they were reported to on a project-by-project basis.

Mr. Ashe: So when they got their piece of paper, it said which project they were involved in.

Mr. O'Reilly: Yes, it did.

Mr. Ashe: What about the collateral mortgages, the \$500,000, the wraparounds that you have talked about? That is just a group.

Mr. O'Reilly: Yes.

Mr. Ashe: Do you know what the total of the wraparounds came to? I know the recovery you have here, but do you know what percentage this is, even roughly?

Mr. O'Reilly: I do not have those figures, because they were the older ones.

Mr. Ashe: I appreciate that.

Mr. O'Reilly: They were pretty much long gone, and I am sorry, I do not have those figures. I could obtain them for you.

Mr. Ashe: Is it safe to assume that is probably reasonably high? On the basis that it was a long time ago, and it would appear to me in all I have seen in the last couple of days that the majority of the financial problems seemed to happen after this. In other words, it was when they got into the syndicated that the shuffling and the big numbers seemed to happen and that \$500,000 is probably a significant percentage of the outstanding. Is that a reasonable assumption?

Mr. O'Reilly: Yes, I would agree with you. The collateral mortgages played a very small part in the overall loss in Argosy.

Mr. Ashe: Thank you.

0920

Mr. Philip: My question is in relation to the comment you made about London Loan. Are you saying the statement was made or implied in any of their ads that they were protected, and if so, do you have copies of any of those?

Mr. O'Reilly: Yes, I have. Just one moment.

Mr. Philip: Pardon my ignorance about the company, but is London Loan a trust company under provincial regulation?

Mr. O'Reilly: Yes.

Mr. Philip: Would it be reasonable for the provincial government to monitor any advertising that might be related to trust companies under its jurisdiction?

Mr. O'Reilly: When you mention advertising, the advertising or promotion appeared to be done in Argosy's office with respect to London Loan. It was not put in the newspapers as a solicitation by London Loan at all. It was just an association. When they got to the Argosy office, they were also given this warm blanket of London Loan being--

Mr. Philip: So it is the old Re-Mor/Astra Trust gimmick then; the same office, everything looks the same, you walk in the same door practically and you think you are getting the same protections?

Mr. O'Reilly: That is right. I am sorry I cannot find the--here we are.

Mr. Philip: So it would not be reasonable to expect that any provincial regulatory body would pick up that kind of misrepresentation?

Mr. O'Reilly: This is a brochure that was picked up in the office of Argosy. My complainant shows the cards of London Loan Ltd. as well as Argosy. They received all these in the Argosy office, and prominent on the advertising is "deposit insurance" across the face of it.

Mr. Philip: I wonder if I can repeat my question, because while you were looking for that, it got lost.

Mr. O'Reilly: Yes.

Mr. Philip: Is it reasonable to say that no provincial government regulatory agency, except by accident, would likely have picked up that misrepresentation?

Mr. O'Reilly: I think that is true. I do not know whether there is anything wrong with people sharing offices as such, and I do not know whether there is anything really illegal about that association. My point of course was not that there was any illegality in that, but rather that this was just one more comfort that was given to investors when they attended the Argosy offices.

Mr. Philip: You mentioned that the investors you represented had called various bodies, some of them private enterprise corporations. Therefore, I suppose that was taken into consideration in the limited settlement that the Ombudsman is proposing.

Mr. O'Reilly: I cannot speak to that. That is the Ombudsman's suggestion. It certainly would not have been mine.

Mr. Philip: The Ombudsman's suggestion is that it was not entirely by government action or inaction, but also by a series of other actions, that the fraud was perpetrated. My question is this: Do you have any idea of how many of the people you represent would have called any government agency to seek advice, be it the registrar of mortgage brokers, the business practices division of the Ministry of Consumer and Commercial Relations, the Ontario Securities Commission or any other provincial government agency?

Mr. O'Reilly: I could not give you those figures with any certainty. I did not inquire specifically of each of them as to how they got involved with it. There is no question that there was a broad spread across the board of how they got involved. In other words, people who went through investment counselling organizations--and there were one or two of those that figured prominently in the Argosy matter. There has been some suggestion by some of my clients that these organizations were very closely associated with Argosy, but I do not know that this has ever come out in any investigation as such.

Mr. Philip: I have one last question. Were any of the investors obtained through the security houses, in other words,--

Mr. O'Reilly: Bache or Pitfield MacKay Ross?

Mr. Philip: Right.

Mr. O'Reilly: None of those, that I know of. I have not seen any of those. They have gone through smaller investment counsellors.

Mr. Shymko: Do you realize that you are on shaky legal grounds?

Mr. O'Reilly: Absolutely. I did not know this was a legal hearing.

Mr. Shymko: I am asking you that on the basis of the statement by the minister. I think all of us are very familiar with the nature of the victims and the profile. Many of us have received, personally, letters from those who have been hurt by this fraud.

My concern is that obviously you have a choice of going to the courts or going to the Ombudsman. Was there any contemplation by the victims of ever going to the courts? Have any individuals gone to the courts?

Mr. O'Reilly: I believe so. I believe there have been some. Let me just say this: when I first became involved with this, and as the facts came out, it appeared to me that there could well be some liability on some of the people who put investors into Argosy, whether it was a banker, a financial adviser or anybody else.

At the time, I was acting for the investors by the court order. I felt I could not represent any creditors individually at that stage. I referred such people, when they would tell me their story, to see a lawyer to see what they could do about it.

The real problem is simply this: somebody who puts up \$5,000, or even \$10,000, if they are going to take on a major chartered bank, it is going to cost them \$20,000 or \$30,000 in legal fees before they even get to court. So it was really an impracticality for some of those investors to pursue whatever legal rights they may have; I emphasize "may" have, because there is certainly no clear-cut liability. But they certainly could have had a crack at it. With the amount of moneys that people were putting in, on the average, it was really an impossibility.

Mr. Shymko: I agree with you. I just wondered whether you knew of any cases that went to court, and whether there had been any court decisions on any individual investors.

Mr. O'Reilly: I do not know of any. I heard rumours that there were some actions against Montreal Trust, for example.

Mr. Shymko: Were they successful?

Mr. O'Reilly: I have not heard the upshot of it all. I just heard they were started. They likely could have been settled. But, of course, that would come out in any claim that an investor would file, because he could not file for the whole amount if he had made a partial recovery.

Mr. Shymko: I am really disturbed by a member of the executive council, a cabinet minister, making the statement he has, because it sabotages the entire institution of the Ombudsman that has been here for over 10 years in this province. It pretty well sabotages the credibility of this committee, many of his own colleagues sitting on this committee. It is frightening to me when such statements are made, that any individual, a workers' compensation victim or anybody else in this province, who goes to the Ombudsman is on shaky legal grounds.

I am sure we will hear more about that particular statement in the House. It may be a case of the ignorance of the cabinet minister as to what the Ombudsman's office is all about, and what this committee is all about. Many of our colleagues may not be as aware of the mandate. It may be a misrepresentation of his statement by the media. But it certainly troubles me when, after seven years of gruelling work, these investors are being told, "Look, guys, you are on shaky legal ground. The fact that you came to the Ombudsman proves that you are not going to win this case, you are not sure of your case. You are losers."

I just wonder--the timing, the reason you went to the Ombudsman and they

went to the Ombudsman, because it was related. I recall my nomination meeting, back in 1980 or 1981, when the school was just packed with investors of Re-Mor and Argosy protesting. I remember Roy McMurtry coming down as a speaker. The timing was approximately when Re-Mor had gone to the Ombudsman and Argosy was heading in the same direction.

Would you say that the reason the victims went to the Ombudsman is the linkage between Re-Mor and Argosy and the whole circumstances?

0930

Mr. O'Reilly: I would say that is coincidental, Mr. Shymko. I would say that this is a classic situation where the Ombudsman has a real mandate. Before the Ombudsman, these people would have had absolutely no recourse.

Mr. Shymko: Would you also say, as the Ombudsman stated in his introductory remarks, that the Re-Mor compensation is, to some degree, precedent-setting of a government commitment and admittance of a responsibility to individuals who have become victims of fraud, and that we should proceed in the same direction with Argosy?

Mr. O'Reilly: I agree 100 per cent, sir. There has been that precedent established. I cannot see that there is any real difference between Re-Mor and Argosy other than the money. The dollars are significantly more. It would be fatuous to suggest that because Argosy was spending more than Re-Mor, we would therefore not consider it a precedent.

Mr. Shymko: I am not too sure as to the exact compensation from Re-Mor. I should have done some checking on it as to whether it was 100 per cent.

Mr. Ashe: Two-thirds.

Interjection: It was 100 per cent.

Mr. Shymko: It was 100 per cent? I do not think so. I think it was less than 100 per cent. But that is one contention you have with the Ombudsman. It would have helped us if you would have backed the Ombudsman all the way, including his most important recommendation, namely compensation, where he states that we must admit there were other factors involved in terms of responsibility other than simply the government agencies. The Ombudsman makes that quite clear. I think the members of this committee probably will see other factors than the government agencies.

Are you still sure that you want to say that the only people responsible are just the government agencies? Banks, financial advisers, accountants; all of those are not factors to be considered. Do you still maintain that position, reasonably?

Mr. O'Reilly: I will say this. There are some investors who probably might have had legal rights against other third parties. They might have. But for the across-the-board investors, for the faceless people who have not told their stories, I would say it is the government that has let them down. They should all be compensated on the same basis. If the Ombudsman comes to the conclusion, as he has, that 50 per cent is reasonable because of all the factors, I would support that. I am supporting it, and I said at the outset that I support the Ombudsman's report.

Naturally, as in Re-Mor, I would like to say, "Heck, I think they should have more than that, and here are reasons that they should have more," but I do not think it is in your mandate to go beyond that. I am supporting the Ombudsman's report.

In all the correspondence from probably 75 per cent of the people who wrote to me, their final, little words were, "We would appreciate anything we can get back, anything we can get back."

Mr. Shymko: I understand that. You are being reasonable. I appreciate your concluding statement now because the decision will be made by this committee. It is important to know to what reasonable degree you support the recommendation of the Ombudsman.

Mr. McLean: Mr. O'Reilly, how many clients do you represent?

Mr. O'Reilly: I represent approximately 150.

Mr. McLean: And you have represented them for how long?

Mr. O'Reilly: Just in the last few months. Historically, I was representing them as a class in the receivership. I represented, from the outset, probably a dozen.

Mr. McLean: What would you estimate that those people would have paid out in legal fees to date?

Mr. O'Reilly: That varies. Some would pay out nothing whatsoever. Others would pay \$1,000 for their personal lawyers; not terribly many. Most of them did not go very far in the legal end to recover their money.

Mr. McLean: If they have retained you, they have been paying you a legal fee?

Mr. O'Reilly: Yes, on a class basis for a small amount across the board.

Mr. McLean: I just wondered about the fact that you were making some money out of these poor people.

Mr. Philip: Is it not reasonable to say that the reason that a large number of the investors would not sue the government would be that the government would probably have been protected by the Public Authorities Protection Act that has a six-month limit and therefore it would have been impossible for the people to sue the government whether they had a case, a strong case or not a case?

Mr. O'Reilly: Mr. Philip, I know of only one creditor who has started that action out of all 1,600.

Mr. Philip: But he would have had to do it within that six-month limitation.

Mr. O'Reilly: That is correct.

Mr. Philip: Whereas going the Ombudsman's route does not impose that six-months' limitation.

Mr. O'Reilly: It was six months before people knew what was happening.

Mr. Philip: That was my next question. So therefore the minister's remark can be taken for the silliness that it--and lack of information that it obviously sprang from.

Mr. Chairman: Thank you, Mr. O'Reilly. Mr. Mazurek, representing the Berger group.

ASSOCIATION OF ARGOSY VICTIMS

Mr. Mazurek: That is right, My name is Patrick Mazurek. I am here with Mr. Ted Berger. I am here before you this morning as a spokesman for the Association of Argosy Victims and Mr. Berger is the co-chairman of that group.

By way of introduction, that is a group that was formed very shortly after the collapse of this organization took place. It is a group of over 600 investors--

Interjection: And still counting.

Mr. Mazurek: At least 600. Yes. They have been actively following this matter since the time of their formation, but for various reasons, which I will allude to briefly later, they have not really been able to have an effective voice until very recently and, in fact, until this procedure that is culminating and this hearing began.

I have provided you with a brief outline of the statements of the submissions which we wish to make. In full awareness of the time constraints and the discussion on Monday and also in light of representations that have already been made by the Ombudsman on behalf of members of our association and other investors and also in the light of the representations that have been made by Mr. O'Reilly this morning, we will gloss over or pay only scant attention to some of our points, and we will try to dwell on some other matters which have not, in our view, come fully to light yet.

By way of introduction, I would just like to briefly describe our perspective on the whole hearing and on the question that is before you. As I indicated on Monday, of grave concern to the members of the association is the fact that their involvement with Argosy has been characterized by members of the government and in particular by the minister in his response to the Ombudsman's report as something in the nature of a bad investment, and they wish to stress that is not what is before you at all here, not at all.

People who make bad investments on behalf of others do not go to prison for six and a half years. People who happen to lose money because they invest in the wrong sort of thing are not subject to criminal sanctions. In this case, we have a lengthy and detailed criminal investigation which has resulted in guilty pleas to some 24 counts of fraud on a grand scale by a number of individuals. It has been clearly established that the money here was lost because it was taken, not because it was badly invested. If it was invested anywhere, it was invested in the pockets of certain people who had no business being where they were. That is our position: It is not a matter of a bad investment.

The question, we would submit, that is before you is with regard to the fraud, which has undeniably taken place, would the fraud have taken place,

could it have taken place, if the regulatory bodies that we have been discussing over the last few days--if those regulatory bodies had done their job in a reasonable, even a reasonable halfway decent manner. That is the question, because if the answer is yes, then we would submit that justice and equity require compensation here, to at least a significant extent if not, indeed, complete compensation, because the fact is, in our submission--and we will not get into the details of why we think this. We support what the Ombudsman has been presenting and what has come out in the other testimony as to why this is the case, but our conclusion is that the answer to that question must be no, that the fraud could not have taken place on the ongoing 10-year basis that it did. The vast majority of the money that has not been recovered was invested towards the latter part of that period.

0940

For example, the debentures and the registered retirement savings plans that you have heard about were all towards the very end of the history of this company, after the regulatory bodies had had many opportunities to assess the situation and after they had clearly developed great doubts in their minds. These doubts were never communicated to any of the members of the public; never, not even a hint of doubt, not even a warning of any sort was ever given. In fact, as Mr. Berger will allude to in a moment, the opposite took place.

As Mr. O'Reilly mentioned, some of these people have indicated to us and to the Ombudsman that they made inquiries--and not just inquiries from various sources but inquiries of the regulatory bodies--and they were not given so much as a warning, not so much as an indication to seek independent advice. They got what they all say was a clean bill of health, the rubber stamp: "Fine. Yes, they are in business. We have cleared them."

I would submit that in that context, all of the investors were putting a reliance on the regulatory authorities that was a reasonable reliance. This was not a blind reliance on the government protecting us from all evils. It was a reasonable reliance that the government would not be rubber-stamping, in effect, giving a blessing to an organization that was perpetrating criminal activity; indeed, an organization that was apparently being run by a convicted criminal. That is our perspective.

I would like now to turn briefly to the matter of the nature of the investing group and also to the matter of the effect that this collapse has had on members of that investing group. This is a matter that I intend to deal with very briefly because it seems to have been covered in some of the other submissions, and in particular by Mr. O'Reilly.

We would simply stress that we want to make some submissions on the point to bring out fully that this is quite a human sort of tragedy here. We are not down on Bay Street with big companies moving numbers from one column to another. It is not a straightforward, commercial law sort of consideration that you are being asked to make here. This is a matter involving some unsophisticated investors, some average people, who have suffered a great deal, both financially and personally, as a result of what has happened here. It is, in effect, not even just a matter of money, and that is part of it. That is what we want to bring out, the human face.

Some comments are made in the outline as to the nature of the investing group. I will simply say in a summary fashion that we support what Mr. O'Reilly said, and indeed the Ombudsman implied that these are not

sophisticated investors. They are not greedy people. They are average citizens, generally of quite an elderly age, who were generally investing all or a good part of their savings, which were relatively modest in virtually every case. That is the theme we wish to get across.

We want to underscore that, on the evidence, it is obvious that essentially all the investments have been lost, except for the small amount Mr. O'Reilly referred to. We also wish to emphasize that after that loss, these people suffered a great deal of hardship. They were not people who could get back up on their feet and make it up. They were, by and large, older people who were out of the work force or soon to be out of the work force, and they had no recourse on a human level to try to rebound from this. They were stuck with what had happened. They were stuck with a loss of their modest dreams as to their retirement and what they might be able to pass on to their children. Beyond the matter of their dreams, they were faced with problems in maintaining what they had, which was the sort of residence they were keeping.

There is material in the Ombudsman's submissions about people having to move in with their children and things such as that. All this brings a layer of loss of human dignity to the whole thing that goes beyond the matter of the dollars and cents.

At this point, I refer you to Mr. Berger who is going to give a couple of brief anecdotes from some of the members of our association as to the way this affected them personally. Then I will return to some summary comments about some of the more political matters.

Mr. Berger: Good morning, ladies and gentlemen who are here in the audience. My name is Ted Berger. I am a victim. I invested \$40,000 on August 13, 1979. At this time I would like to read to you, without going into my story, which I may comment on at the end, some of the letters and correspondence I have received over the seven years on what has happened to these victims, some of which has already been presented by the Ombudsman. I am very confident in calling them victims although there are some members of the Legislature who do not like that comment. However, I say to you emphatically that they are victims now.

In 1987, a victim reports to me: "In 1978, we took our life savings of \$120,000 and invested in Argosy. The security we finally strived for all our lives has made these last few years very hard for us. We are not gamblers and only invested our money in a financial institution licensed by our government. What could be more secure? The government made a precedent when they recovered the funds of investors in Re-Mor and Astra and we only ask the same consideration."

Another victim says in 1985: "I myself was in touch with the OSC and was told all was okay. As a result, I lost \$34,000. I am a widow in my 70s. You can imagine how devastating this was."

Another victim writes in 1985, "My husband's illness and death in 1983 was precipitated by the worry and stress of these losses, saved for my retirement."

Another victim writes in 1985, "I truly feel the worry of losing all these moneys (our savings for retirement) caused my husband so much stress that he lost his life."

Another victim writes in 1985: "Before investing in Argosy, I first

spoke to officials at the Bank of Montreal and the Canadian Imperial Bank of Commerce, both of whom were backing Argosy financially, and was advised that Argosy had an A-1 rating. I also telephoned the Ontario Securities Commission, who not only also gave Argosy an A-1 rating, but also stated that no officers of the company had any previous fraudulent record."

Another victim writes in 1980: "Where can the public go to get some honest information on these people before making financial investments? If the commission cannot serve the public better than this, what good are they? Why are we paying taxes for this protection, but not getting it?"

Another victim writes in 1985, "Advised by the Ontario Securities Commission that Argosy was financially secure before buying \$8,000 in debentures."

Another victim writes, "I am 87 years old." He invested \$47,000, representing the savings he had worked 48 years to acquire, and as a result, was forced to move in with his son.

Another victim, 71 years of age, writes, "Lost \$20,000 investment and was forced to move in from apartment" she had occupied for 18 years to less expensive housing and take in a boarder.

Another victim writes, "Invested over \$48,000, after" she says, she "spoke to people at both the OSC and the commercial registration division of the ministry and was told that Argosy has 'a clean bill of health.'" These savings were to have financed her retirement and the loss has created real hardship because of her ill health.

As far as my story is concerned, as I mentioned, I invested \$40,000 in 1979. My wife was nine months' pregnant at the time with our second child and seven years later--my daughter now is going to be eight years old--I am still waiting for justice. Where is justice for the victims? Where are victims' rights?

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I do not know whether you recall a story that was in the papers about three or four months ago about a lady who went after her husband's estate. After all the legal wrangling and so on, she finally got judgement, but by the time the judgement was collected all her money was eaten up by the legal fees. As you know, as a result a tragedy occurred. She committed suicide because of the despair that had taken place over the years of legal wrangling that she went through; first to get a part of that money back, and then when she finally did get justice, it took more legal wrangling to get the justice delivered.

Justice must be seen to be done from this hearing, ladies and gentlemen, and this is a victim speaking to you.

I will turn it over to Mr. Mazurek.

Mr. Mazurek: As I indicated, that was just meant to be illustrative. We are not trying to be thorough. There are a number of sad stories that resulted from this whole unfortunate episode. In fact, they are all sad stories of all the investors. We just wanted to give you some flavour for what it is like from their point of view.

I turn now to the matter of the political nature of the decision that is before you. Obviously, we submit that you should grant compensation, at least to the extent proposed by the Ombudsman, for reasons of fairness and equity that we say go beyond the matter of the political system. However, you are elected officials and you are making this consideration as part of a political process. We do not wish to belabour the point or go into incredible detail about exactly who said what, but the members of our association have, over time, been advised by or led to believe by members of all the parties at different points in time that they are committed to what we might call a fair and equitable resolution of this whole matter. Certain commitments were made that were even more specific than that.

We simply stress that it is our point of view that elected officials should stand by commitments that were made before they were elected. We invite each of you to take that into consideration when you make your decision about this matter, because it is our submission that the record shows the members of this association were given reason to trust that the members who now have been elected would respect their position and seek an equitable resolution for them. They hope that as a result of this hearing they do not conclude that trust has in some way been misplaced.

That is all I propose to say in that regard. By way of summary, I would like to say on behalf of the association something by way of a response to the position the minister appears to have taken with regard to this matter.

First of all--this point was stressed earlier--we wish to take issue with the confusion that appears to exist in the minister's mind as to the nature of the difference between a bona fide, honest financial failure, an investment that went bad, and a loss that results from an illegal act. I would not dwell on the point so much but for the fact that in his formal response to the Ombudsman, the minister has clearly just lumped the two together. He says he is concerned about creating an expectation in the investing public that government will accept responsibility for all financial failures and illegal acts in the private sector and that such a result would create undesirable distortion in the financial marketplace.

We submit that these are two entirely different things. No one is asking--certainly not here and I do not imagine anywhere else--the government to accept responsibility, especially not all responsibility, for financial failures, but illegal acts are a different matter if they are illegal acts perpetrated by people who are operating under very specific regulatory authority, under regulators who have incredible powers to investigate and control the activities of these individuals. We invite you to look at the various sections of the Securities Act under which the Ontario Securities Commission has some jurisdiction here, and indeed, under the Mortgage Brokers Act.

There are wide-ranging powers and resources available to these organizations. We submit that if they are there to do anything, one of the main things they are there to do is to protect the integrity of the whole system. The first and foremost thing they have to do in that regard is to keep criminals out of the system, especially criminals who have a proven history and a continuing practice of engaging in criminal activity that is a direct threat to the investing public.

I say on behalf of the association that we find it hard to understand how there could be, to use the minister's words, an undesirable distortion in the financial marketplace if the government were to accept its responsibility

to keep criminals and perpetrators of fraud on a grand scale out of the investing system of this province. I think that would create a desirable climate for the investing public.

That is what is ultimately at stake here, the integrity of the system. We have a free market system in which we all enjoy the benefits. Part of it is the exchange of investments. The exchange is huge. Billions of dollars are involved every year in this province and the government goes to great lengths to try to preserve the integrity of the system. As we have heard in this hearing, this Legislature has put in place a fairly extensive regulatory system. It pays a lot of money to enforce that system. It pays a lot of money through various channels to enforce the law in other respects. The criminal investigations in this very matter at the time were termed the largest fraud investigation and prosecution in history in this province. I am sure a lot of resources went in there as well.

The government is committed to expending some resources to preserve the integrity of this whole system so that the investing public will not take its money elsewhere, will not run and hide from investment in Ontario. It wants people to participate so we can all have the benefit of it. It is important that the public has confidence in the system. A just result here will underscore that confidence and underscore the fact that the government is not running and hiding from its commitment.

If the government is not making that commitment, then we have to question why all the regulatory system is in place. If it is not there to deal with this kind of problem, what is it there to deal with? Why are we expending those resources?

I do not mean to be provocative in this regard, but just to bring the point home I will also say that much of those resources and much of that regulatory system are designed, by and large, to serve investors with larger amounts of money, the larger companies and the wealthier members of society who, statistics show, participate in the securities system to a vastly greater extent than those at the lower-income levels. In this case, we have some of the members of that lower-income group who have been participating in the system. I submit, on behalf of those persons, that they should be given the same sort of protections that are available to the others. Again, the theme is the integrity of the system.

By way of closing remarks, it is our submission that the evidence so persuasively marshalled by the Ombudsman and elicited by yourselves through this hearing and through the assistance of your counsel demonstrates quite clearly that this system has failed here and it has failed miserably. It is not a little mistake; it is a big mistake. There have been a lot of mistakes. It is not one or two isolated errors in judgement. You have before you some evidence about some matters where the minister's representatives have not been focusing their attention because they indeed have no intention, as I understand it--calling it simply an error in judgment.

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The extension of special privileges to Argosy at the time of the registered retirement savings plan investments was within a climate where they clearly understood there were problems with this company. With one department of the Ontario Securities Commission not even communicating at all with the

other side of the same department, the left hand literally did not know what the right hand was doing.

In our submission, that is not an error in judgment. We are into errors and a breakdown of the system. All we are asking, and I believe people across the province support it, is that when errors are made, they be recognized and that amends be made so that justice is done and we learn from the errors so it does not happen again. That is what we submit this whole committee is about, and we think the sorts of proposals being made by the Ombudsman are the effective way of achieving that result.

Because the matter has been raised in questions, I will say as a last point that, in our view, the specific proposal being made with regard to compensation of all the victims, and the members of our association in particular, is that 50 per cent or half of the loss be paid. We submit that that is, in effect, a fair, just and equitable compromise; that a position can be made, in light of our submission, that this would not have happened had the regulatory bodies conducted themselves in a reasonable manner.

An argument can be made that the compensation should be more, and indeed, the precedent that has been alluded to already this morning about the Re-Mor matter did involve a larger portion.

In the light of all that and all the very major errors made here, we submit that 50 per cent compensation, with interest, is a very fair and equitable one. It is not really a matter of: "Now you are down to 50. How much lower can you go?" Essentially, at bottom, these people feel they were robbed and they would like complete compensation, but 50 per cent has been proposed and we say that is fair and reasonable.

I might also say there is precedent beyond the Re-Mor matter. There is precedent in this government for compensation for victims of crime when there is no government wrongdoing. In fact, we have a Criminal Injuries Compensation Board. At present, it focuses its attention primarily on non-white-collar crime, but the principle is there.

I submit that this principle further underscores the legitimacy of this committee granting some compensation here, even if you do conclude in some fashion or another--we do not by any stretch of the imagination suggest this should be your conclusion--that there was not an error by the government as a whole but by the particular regulators involved. Even if you come to that conclusion, there is still precedent and rationale to support some compensation here.

I had some remarks prepared in response to certain questions that were raised earlier when other witnesses were before you. Given the time that has gone by, we propose not to get into that but just to wait and then we will try to deal with your questions. If you would like us to comment on things that have already been asked of other persons, we would be happy to do so.

I will end our formal presentation in that fashion. The only exception I might make to this matter of waiting for your questions is with regard to the matter just raised during Mr. O'Reilly's presentation, I believe by Mr. Shymko, with regard to why legal action that may or may not have been taken.

There are a few points our association would like to make about that. I will not get into all of them, but one very central one, and I believe the Ombudsman will support this submission, is the fact that in this case, because

of this criminal investigation I referred to, this massive, largest investigation and prosecution, all the relevant documentation that would have allowed people to marshal a case in the civil courts as well was tied up by the criminal investigation, I believe. Even the Ombudsman had to delay his investigation for three or four or five years before he could get his hands on the material.

In the light of that, in the light of the logistical problems for these small investors facing potential actions against the government and perhaps huge institutions and in the light of the logistical difficulties of the people getting together--because under the law of our province there is no class action, so they had to get some form of organization together. Those of you who are familiar with the background of this matter will know that, for reasons of confidentiality, the lists of who had even invested in the company were not made public to be used for organizational purposes until, as I understand it, some time about mid-1985, so we are already years and years after the events.

In the light of all that, these people were facing immense practical difficulties in marshalling a case in the courts. Certainly, if they were facing a limitation period with regard to the government--and we are not making any specific submissions about that, but if there were--there was no way they could have done anything within the time period at all.

I submit, for all those reasons, that, as Mr. O'Reilly said quite eloquently a moment ago, this is exactly the kind of situation that an office like the Ombudsman's is best designed to deal with, given the practical limitations in our court system--I am not referring to any problem with the system, but to the practical limits of access to the system for people like members of this association. Because the matter was just recently raised, the members of the committee seem to have a fair bit of concern about that. I did wish to give our view in support of what Mr. O'Reilly said about that matter. I do not think, as Mr. Philip said, that the minister is being fair at all in raising that as a consideration in whether this committee should follow the Ombudsman's recommendations.

That is the end of our formal remarks. Unless you have any questions, that will be the end of our presentation. Thank you for your decision on Monday to hear from us.

Mr. Ashe: Being aware of the time, I will attempt, and I hope all others will attempt, to be brief.

Mr. Shymko: Are you talking to me?

Mr. Ashe: Including Mr. Shymko, my colleague on the right.

Mr. Berger, first, could you briefly describe the nature of your personal investment? In other words, what got you there and what you invested in individually. I know you made your reference to an amount, but you really did not say what it was and how you got there.

Mr. Berger: How did I find out about Argosy? Is that what you are referring to?

Mr. Ashe: Yes, and what did you do before you made your investment personally?

Mr. Berger: At the time, my wife was working at the Royal Bank and was made aware of the company through the Royal Bank. We decided to investigate very thoroughly. We contacted the Royal Bank--clearance A-1; contacted a lawyer--no problem--who in turn contacted many other individuals, including Dun and Bradstreet and other institutions; contacted the Ontario Securities Commission by telephone--no problem. We invested as a result of all this A-1 rating and clearance, which I spent at least a week investigating. I did not just get into this overnight. I do not usually do this type of thing overnight. As a result, a week later I invested \$40,000 in Argosy syndicated mortgages out in Alberta.

Mr. Ashe: Was any of yours on the list we got this morning, where there was some reasonable recovery?

Mr. Berger: Nothing, zero. Mine is conclusive. I have a letter before me from the receiver, and my return is going to be nil. That was confirmed to me five years ago, not just today; five years ago, I knew there was nothing because it was foreclosed in Alberta. I made outright pleas to the federal government. I was in touch with Jim Peterson, brother of David Peterson, and I was in touch with Paul Cosgrove because that property was insured by the Canada Mortgage and Housing Corp.

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I spent lawyers' fees to extremes. I spent \$5,000 in legal fees in trying to save that thing out there in Alberta from being sold so that the victims could recover something. That was my plea, "Please hang on to it until it reaches a certain amount of value that would allow some money to be returned to the victims in that property, not just Guaranty Trust." No, Guaranty Trust said: "We have to get our money out of there. Forget the victims." That is exactly what their response was to the receiver, to my lawyer and to Mr. Cosgrove and Jim Peterson. No avail whatsoever. I pleaded with CMHC, in turn, when it bought it over, "would you please, as taxpayers of this country, something should be returned to the victims." No avail, none whatsoever.

Mr. Mazurek: If I might, further arising out of that, Mr. Ashe, very briefly, the point was raised earlier this morning about the fact that some of the people checked with financial institutions and they got clearance through that route. Indeed, there is evidence some checked with the regulators themselves and they got the same answer, so I do not know what effect it really has.

I would like to raise one point about that, that is, in line with the general theme of our submissions, it is the integrity of the system that is important here. I imagine, if those other persons were here, and they are not, but if representatives of those other financial institutions were here, they would want to say the same thing we are saying, that we were relying on the government, too, in effect.

We looked at the fact that they had the approvals, we knew there had been a Commercial Registration Appeal Tribunal hearing and somehow these guys had been cleared, and we placed a certain amount of reliance on that. I am not saying this may totally exonerate them, but I wish to stress that they are not like a separate entity out there that is supposed to provide total protection to people in the system. They also rely on the integrity of the system itself. I do not think it is useful to look at them and try to pin the blame on them, as it were.

Mr. Berger: May I say, before your next question, at the time I invested my money, it is now known today that this company was in default for millions of dollars, not just to the bank, but to others, and I was still given that A-1 rating from all the way down the line. How do you explain that?

Mr. Ashe: I am explaining it exactly to the point I was going to get to. I will ask Mr. Mazurek, do you honestly believe what you just said, that you do not think--and I think Mr. Berger helped make my case, although I am sure he did not mean to--the Royal Bank had any responsibility in this, if its customer was already in default with the bank? This is not a fly-by-night, corner institution. The government is not either. I accept that and appreciate it and understand it. Neither is Thorne, Riddell, but for sure, neither is the Royal Bank of Canada.

Mr. Mazurek: I cannot speak for them. I am not here to speak for them, but the point I was just making, and I made it because some of these names started to come up, was that they, as well as individual investors, I imagine, pay attention to what is and what is not being approved by the government regulatory persons or bodies.

I submit, therefore, that while I am not saying the thought that it is all their fault, that they did not give the people the right advice, is completely without merit, I am just saying it is not a full explanation because it all goes back to the central bodies that are in charge of keeping the crooks out of the system. That is not the Royal Bank's job.

Mr. Berger: It all falls back in the government's lap. They are the ones who gave the gun, if I may use that symbolic term, to let this guy out and start dealing with the public again in the same business he did before, of which he was criminally convicted.

Mr. Ashe: There is no use rehashing all of that.

Mr. Berger: Of course, it has all been said.

Mr. Ashe: We have covered that many times. I must say, the more I have heard in the last few days, and frankly you have made it even stronger, the more I honestly do think that the Royal Bank is a significant part of this problem. To what percentage I am sure is going to be part of the deliberations of this committee, and that is not trying to exonerate the role of government by any stretch of the imagination.

I do not know about you, but I sure have had dealings over the years with the banks and I can tell you, they do not go on the basis that because I work for government they are just going to flop out a pile of money to me, particularly when you are talking millions of dollars and you are already into them. These are not unsophisticated lenders, for the sake of a better description. Mind you, that is the role and one of the problems this committee is going to have to deal with. I will get off that one.

My last point: You alluded to the role of politics, if you will, or a political body. There is no doubt this is a political body in the context that the committee itself is made up of politicians. I guess that makes it a political body, but it is fair to say, as I think all members of the committee probably would agree, that if there is a committee of the Legislature that has attempted to fulfil its mandate in a nonpartisan way--to the degree that is possible and, realistically, that is not 100 per cent pure, that is for sure--it has been this one.

In your view, is it better for this committee to try to adjudicate and concur or otherwise with the Ombudsman's report on a personal basis, based on what we see here, and come to a conclusion, or that the three political parties should make a political decision and direct their members of this committee accordingly? Which, in your view, is the fairer?

Mr. Mazurek: As I indicated, our view of the whole matter is that the former of the two procedures you described, a proper adjudication on the facts by the members of the committee in an impartial manner, is the appropriate way of seeking justice and equity here. That is certainly our central submission.

The only reason we bothered to mention the matter of certain political commitments--and we just mentioned them in a vague fashion--was that certain organizations, and I am not pointing any fingers at anyone right now, seemed to feel that the matter was clear enough.

They had satisfied themselves, back prior to the last election, that it was abundantly clear to the extent that, even though they knew this is the sort of forum where these things are discussed in detail, they felt there was enough there to go on record with regard to certain support for the claims of the victims. That is all we were alluding to, that some people seemed to think it was that clear before.

Make no mistake that our central submission to you this morning is that we want it dealt with on the merits, as it were, and not as a football where everybody has to run to one side of the line or the other.

Mr. Ashe: We agree on that one 100 per cent. As to the political commitments, parties, for reasons best known to the system I suppose, are wont to make all kinds of criticisms and commitments when they do not have the responsibility of government that sometimes, in the reality of that charge, puts their perspective a little more realistically.

Mr. McLean: You indicated that you agree with the Ombudsman's report. In regard to the 50 per cent payment and the interest, how would you handle that aspect of that report? If you paid the 50 per cent plus the interest for seven years, you would have more than what they had invested. What would be your consideration with regard to that?

That is the part of the report I have a problem with, because there is no clear-cut way in that report. You know what the interest was in 1980 and you know what it is today. Who is going to determine what the interest would be, other than a court of law? If that report had read, "We will pay you the two thirds, under the same precedent that was set before, without interest," then there would be no problem. How would you handle the interest part?

Mr. Mazurek: Given that the proposal to the committee has been framed in the manner of 50 per cent plus interest, we will give you our thoughts about how that should be calculated, that is, as follows.

This Legislature already turned its mind to this whole issue when it passed the Courts of Justice Act that governs a similar consideration in all civil proceedings, that is, when it is determined at some subsequent date that moneys were lost at an earlier date due to certain culpability. The interest dates back to that time and is calculated in a framework that this Legislature felt was reasonable. As you are aware, it is tied to the Bank of Canada rate for prime loans.

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A remark was made the other day about how guaranteed investment certificates may give you a little bit less. I submit that the figure would be calculated from the Courts of Justice Act in accordance with the court application of that act, which is the averaging that I believe Mr. Kerzner referred to. That represents a nice median, because although a guaranteed investment certificate might bring you a point or two lower, there are other types of investments that are reasonably secure that could bring a lot more.

Just as an illustration, if these individuals had that money in hand seven years ago and they put it into what many feel is the most secure of investments in this town, real estate, it would have gone up a heck of a lot more than a GIC. In fact, it would have gone up a heck of a lot more than the Courts of Justice Act rate. I am just using that is an illustration.

Then, of course, there have been the effects of inflation over that time, so money today is not quite what it was then. That should be borne in mind. We have to look at what the real interest rate is.

Lastly, and I wish to stress this as far as the appropriateness of interest is concerned, I refer back to my comment a short time ago about why this took so long. The Re-Mor matter, which happened at or about the same time, somehow got resolved much earlier. As we understand it and as the Ombudsman posits it, the explanation is that the criminal investigation tied up everything for five years and nobody could get to it.

That was really none of the doing of these people. It is just another way in which this criminal activity has tied them up. For them, who had nothing to do with the delay, it would be inappropriate--

Mr. McLean: You have gone beyond answering the question into another area altogether, with the lack of time we have.

Mr. Mazurek: I am sorry.

Mr. McLean: You indicate you are speaking on behalf of 600 clients. How long did it take you to accumulate those numbers?

Mr. Mazurek: There are 600 members of the Association of Argosy Victims, for which I speak. The organization was formed shortly after the collapse, and I believe the vast majority of those members were signed up within two years--Mr. Berger says within half a year--of the matters coming to light.

Mr. McLean: The amount of time does not matter.

Mr. Berger: There were about 300 on record in 1980-81, when we first had a group organized. With the criminal investigation and the Ombudsman's investigation going on, there was a gap. Recently, we have formed a larger group through getting in touch with a couple of other people who have been working with other groups. Now, we have become a united group of approximately 600 people.

Mr. Mazurek: There have been a few people coming in.

Mr. Berger: It is still growing. We are getting phone calls every day.

Mr. McLean: Right, and they all pay you a fee.

Mr. Berger: No fee; absolutely no fee.

Mr. McLean: No fee at all. It is all free. That is great.

I have one thing I want cleared up in my last question. You went on at some length about error of judgement. You emphasized that very strongly. I want to know the definition of it to clarify it. There was somebody here on Monday who said he wanted 10 minutes to make a presentation and he went about 20 minutes to 25 minutes today. Would you call that an error of judgement?

Mr. Mazurek: The committee asked a lot of questions even of the fellow who went before, Mr. O'Reilly, and it has asked a number of questions about other matters. We felt we should address some of those, because we anticipated they would be asked of us. I did not have an eye on the clock, but I have been known to be long-winded before and maybe it happened again. It is a personal foible more than an error in judgement.

Mr. Ashe: It goes with politicians and lawyers.

Mr. Philip: They might have been finished if all members had been here at nine o'clock.

Do I gather that your position vis-à-vis the minister's statement that the only reason your investors went to the Ombudsman rather than taking legal action was that (1) there was difficulty in terms of finding who the investors were; (2) there is, in fact, no group action legislation in Ontario and therefore it makes it more difficult to go that route; (3) some of the clients are very small investors and therefore the legal cost of putting more money after already lost money would not be attractive to them or maybe even possible for some?

Would you also agree that even if you overcame all those three problems, the Public Authorities Protection Act would have militated against your suing the government; the information that they lost their money would have arrived at such a time that the six-months expiry date would have made it impossible to sue anyway?

Mr. Mazurek: The association's position in that regard is that we are not sure. It would seem on the literal words of the statute that, yes indeed, you have only six months within which to bring an action against the government.

Obviously--and I will not go over it again for all the reasons I said earlier--that was totally unfeasible here. If the statute is applied literally, it means that in these circumstances a court action against the government was essentially impossible. How a court would actually apply that provision to this case is something we would have to ask it. Certainly the courts do not want to interpret statutes so that they do result in such a blanket denial of access to justice, but it has happened before, so it might have happened here.

Second, it is not a very plausible option for the practical reasons discussed, and it would seem that the Office of the Ombudsman was designed to speak to this sort of situation.

Mr. Philip: I do not want to recycle the kinds of things that you

dealt with, which I would rather take up with the Ombudsman, but it seems you have made accusations in the newspapers that members of the government made certain commitments or promises to you while in opposition. I have read the Hansard, Mr. Breithaupt's statements at the time and Dr. Stuart Smith's statements, and while they attacked the then government for incompetence, bumbling and every other adjective that you can add, I do not see any commitment. I am wondering what kind of commitments you had from the now government that was then the official opposition, because I cannot find anything in Hansard that makes that commitment and since you or other investor representatives have made the statement publicly, I would like to know where those commitments were.

Mr. Mazurek: Because you have asked a specific question, we will try to respond more specifically than we had intended to in our submissions and we will try to respond with regard to the organization that you seem to be pointing your remarks towards.

The Leader of the Opposition at the time this matter arose has been quoted. We have taken our quotations from the newspapers, and I will quote two statements by the Honourable Stuart Smith in this regard, both dating back to 1981. One is, "The Davis government let the Argosy investors down just as they let the Re-Mor investors down." The second is, "We will compensate the people who lost their funds as a result of maladministration under this regime and will do so as soon we take over."

I do not have the full context for you, but those comments were from newspaper reports at the time and they were stated in those reports to be quotes. That is the sort of thing we are relying on. It may amount to more of an implied thing, although I would say the first is more implied because of course Re-Mor was being dealt with in a certain way at that time and the connection is drawn. The second sounds to us more like a specific commitment. In general, I would just say the theme of it certainly seemed to be such that--and this is our point really--the people were certainly led to believe that was the way that party felt at that time. That is the only reason we raised it. Until the matter came up after the Ombudsman's report, nobody rushed to change that position.

As we said in response to Mr. Ashe, we really see it as a matter of equity and justice to be dealt with on the merits, but politically there seemed to be some commitments made. If they are to be left in the dust, we would like to know why.

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Mr. Philip: Since they were not left in the dust in the newspapers in recent statements, I find it only fair to have you clarify it because I could not find the statements. If you can supply those to us, I am sure they would be useful.

Mr. Mazurek: I believe we have that material available.

Mr. Ashe: To help out in that last specific quote, it was as they quote, "We will compensate the people." Those were the exact words used. That was by the then leader, Dr. Stuart Smith, in the Globe and Mail of March 13, 1981. It is shown as a quote rather than just as part of the body of a story.

Mr. Bossy: You stated that all parties have said things at various points. If we are going to have quotes from one party, it would be--

Mr. Philip: Our quotes are in Hansard. I know what Mr. Ziemba has said. I have never necessarily justified all of Mr. Ziemba's remarks, but I know what was said by our party.

Mr. Bossy: I do not think it is necessary to go through all the quotes because there have been a lot of quotes in the last number of years. You referred to all parties having said that at various points, and there is evidence from all parties to that effect because of newspaper articles. At election times, these statements have been made.

Mr. Mazurek: As we said in our main submission, we are not so much pointing fingers; we are saying everybody at certain points in time made the commitment.

Mr. Berger: We have a list of quotes from various parties.

Mr. Shymko: I think Mr. Ashe indicated that this committee has traditionally been nonpartisan, and I guess we have to be careful in our remarks not to indicate that this tradition is broken in any way, but I still want to comment on the unfortunate and irresponsible statement by the minister with regard to the fact that your going to the Ombudsman is a reflection and an admission of the legal weakness of your case.

Mr. Mancini: That is a lot of baloney, what we are hearing from the member for High Park-Swansea (Mr. Shymko).

Mr. Chairman: Order.

Mr. Shymko: The statement in the Globe and Mail on Tuesday is unfortunate. Since the statement said that you, the victims, must feel on shaky legal ground because you went to the Ombudsman, I just wonder whether you are planning to respond to the minister since he alludes to how you feel.

Mr. Mazurek: I think we just have. You gentlemen gave us the opportunity.

Mr. Berger: In our statement; we just made a statement.

Mr. Mazurek: We just tried to explain why we feel that is not, first of all, an appropriate consideration, and, second, why it is just not factually applicable, in any event.

Mr. Philip: Do you want him to repeat it? You enjoyed it the first time.

Mr. Shymko: Just relax. Get yourself another cup of coffee.

Mr. Berger: We want to keep the human issue in front of us.

Mr. Shymko: I think one of the important points you made is that we, unfortunately, have been focusing on two forms of victimization. The first one is that you are the victim of maladministration by the government; namely, the actions of two government agencies which, according to the Ombudsman, were wrong in law. In my questioning yesterday as to the percentage factor of that maladministration, the registrar indicated it was 10 per cent. At least we have a government agency admitting a factor involvement; not to your satisfaction, the 10 per cent, but at least it is an admittance. For some reason, the minister says zero.

The second victimization is that of human error, bad investment, bad judgement, basically sort of a human mistake attributed to banks--the Royal Bank, Bank of Montreal, Royal Trust--auditors, lawyers and financial advisers who have all covered their fannies, if I may say, by recouping some of these things; legal fees have been collected. But the third victimization, which you have raised, is really not being discussed here and was not discussed. In the percentage figure that the registrar indicated, he feels 10 per cent may be attributable to maladministration. The other 90 per cent is human error, bad judgement and bad investment. The fact is you are victims of crime; 24 counts of fraud is definitely crime.

I just wondered whether you have contemplated at any stage requesting some review of the present Compensation for Victims of Crime Act so that there should be no prejudice or discrimination in terms of victims of crime, no matter whether the criminal is a white-collar criminal or whatever other colour of criminal. Have you ever addressed this? You have made such a case today. Was this ever considered by you, as representatives of the victims, to look for some compensation in terms of changing the law as it applies to victims of crime?

Mr. Mazurek: No. We are proceeding in this fashion because we see this case as one of specific government involvement and error. Therefore, the appropriate channel, if it is not the courts for the reasons we discussed, would appear to be by statute and by definition through the Office of the Ombudsman.

This is not a case of a man coming down the alley and hitting you and the government having nothing to do with it. I simply mentioned that organization in support of our position to indicate that there is a precedent for the government honestly admitting certain mistakes and seeing that justice is done when it has erred. In fact, the government has extended resources in cases where it is clearly not even involved. It might be something for the Legislature to consider, maybe arising out of this committee, that white-collar matters, where there is no government involvement, could be dealt with through that organization, the Criminal Injuries Compensation Board.

However, we would not want to obscure the issue here, because I simply raise that to buttress our position. We see this as a case of government involvement for all the reasons that have been made abundantly clear over the last couple of days.

Mr. Berger: May I just say something further? What happened here clearly underlines that victims' rights, which I raised earlier if you recall, have to be addressed in the near future. I think the government, at the federal or provincial level, is looking into victims' rights. Where are they? Where do they come into play?

Mr. Shymko: Basically, are you saying that you have been victimized by criminal activities because of the maladministration of government which allowed or made that activity easier for individuals?

Mr. Berger: Yes. Absolutely.

Mr. Shymko: That is basically how you package your argument. One of the figures that was mentioned by the registrar is just unbelievable. I believe Mr. Ashe asked him to repeat that because it was dumfounding. When you speak of the integrity of our system, the regulatory system regulates what I understand is \$150 billion of syndicated mortgages. That market opens itself

for sharks, speculators and white-collar criminals, if I may use that term, who may be interested in that market and certainly will exploit the moneys available and victimize people. So \$150 billion and the integrity of that regulatory system--you have certainly made a case today.

Although the Ombudsman did not make this recommendation--he has recommended amendments to two acts, the Securities Act and the Mortgage Brokers Act--maybe this committee should focus on amending the Compensation for Victims of Crime Act so that, as you justly pointed out and in the light of that figure, the white-collar criminal should be included in the mandate of that act. Are you urging the committee to look into that and would you be supportive of such an amendment to that act?

Mr. Mazurek: We certainly are supportive of anything that will prevent this happening to any other citizens of the province. Unfortunately, until a few changes are made, as the Ombudsman has suggested, there does not seem to be any guarantee that it will not happen to somebody else.

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Mr. Shymko: It may not happen in this case, but I think in the future it is something we may question the Ombudsman on, as to the wisdom of amending that act.

Mr. Mazurek: Anything that would help avoid it happening again we support, although we feel our case is to be dealt with in this forum.

Mr. Hayes: I would like to get a clarification from Mr. Berger. You mentioned that your and some of the other victims actually called the Ontario Securities Commission to get information on Argosy and that at the time you were told everything was pretty well on the level, even though the Ontario Securities Commission knew even at that time, or at least suspected, Mr. Carnie had actually admitted to fraud and these contacts were made even after there were questions about Mr. Carnie and the Argosy investment. Is that true?

Mr. Berger: Yes, that is correct.

Mr. Chairman: Any further questioning? Thank you, gentlemen.

Mr. Mazurek: Once again, on behalf of our association, we thank you for hearing us.

Mr. Berger: We have taken a bit more time, so we apologize for that delay, but I think after seven years we appreciate it very much.

Mr. Ashe: Mr. Chairman, before we get on to the regular business, I am going to ask something more on the basis of doing it now, because it may take somebody a little time, and I do not know who, or it may already be available. I would personally like to know, if we do not already know it, some samples of guaranteed investment certificate and prime rates during the years 1978 and 1979. In my view, that is going to be one of the valid considerations in this whole issue, and I do not mean I want 104 illustrations, but an illustration from time to time of the GIC and prime rates.

Mr. Kerzner: I expect the Ombudsman could probably give that to us. They have worked out certain average rates. Over the lunch hour, we will see what they can dig up from their research.

Mr. Ashe: Yes, but I think there are two aspects here. One was figuring--and I know we already got that--the average rate in terms of interest compensation, and that was really from 1980, but the other part of that, as I see it, is that a lot of different issues alluded to the fact of "greed." The people went into these investments because it was so attractive and gave so many more points that they should have been aware of it.

On the other side of the coin, we had the reference this morning that it was only about a point or so over the GIC rate or prime rate at the time and therefore was not overly attractive from a greed sense. Frankly, I think it is a valid consideration for this committee to be aware of. It is in my view, anyway.

Mr. Kerzner: I think we can get that without a lot of difficulty.

Mr. Hayes: I agree with what Mr. Ashe is saying, but at the same time, I hope this committee does not base its decision on how much moneys we are going to get. I think we should be looking at the issue, period, as to whether it was maladministration by the registrar of mortgage brokers and the Ontario Securities Commission. I hope we distinguish one from the other, though, first of all.

Mr. Philip: I am wondering, because some of us have other commitments, what is our procedure? We will sit Thursday afternoon. I assume then we are breaking for Easter and I gather there was some inquiry as to whether or not we were going to sit to write the report next week. Some of us have other committees.

Mr. Chairman: We do not have permission to sit next week.

Mr. Philip: Has permission been denied, or have you just not heard back?

Mr. Chairman: We have not heard back.

Mr. Philip: When are we likely to find that out?

Clerk of the Committee: I made inquiries of the government House leader's office yesterday afternoon. At that point they were unable to give an answer to our request. I will ask again this morning to see if I can find out.

Mr. Philip: I think it is important for those of us who are serving on other committees and I think it is important for these people who are affected to know when a decision is likely to come down and not that they are going to simply dangle until the House is recalled and we are able to meet for a day or so.

Mr. Ashe: In that regard, if you recall, in our discussion on that issue, I guess it was last Friday, we were asking for some time next week, which I think there was a general consensus we would not get. The next choice was for Monday, April 27, the day before the Legislature reconvenes, which in my view may be more likely. Frankly, I do not think we are going to get either of them, so I think the chairman and the clerk are going to have to put their minds to the next possible choice after that.

I concur with Mr. Philip, that it has to be finalized; that is number one. Secondly, the further away we are from the day-to-day presentations, the more the gray matter lets it slip into the doldrums in the back because other

issues take over. I think that is extremely important. I happen to know that at least one of the other committees, namely, finance and economic affairs, had asked for extra time and that was denied. I suspect the results may very well be the same here.

Mr. Philip: I do not know what the other two have said.

Mr. Chairman: The clerk will check this morning.

Mr. Philip: I am available for only one day, but I think we could go through this on the Tuesday and deal with it.

Mr. Shymko: Mr. Chairman, I just wonder if you could highlight to the House leaders that the committee on Sunday shopping has received an extension of two days, I believe, at its request; by comparison, the issue of Argosy is far more important, and in light of that decision they should really consider giving us an extension.

Mr. Philip: They are sitting on Wednesday and Thursday, so we could ask for Tuesday.

Mr. Shymko: Sure; any day.

Mr. Ashe: I will not be here Tuesday.

Mr. Philip: Or Friday.

Mr. Chairman: Okay. Counsel?

Mr. Kerzner: When we broke yesterday, I was finished with my questions of Mr. Mitchell. If any of the members of the committee have questions that they have not yet asked of Mr. Mitchell, I suppose now is the time.

Mr. Chairman: Have the members any further questions for Mr. Mitchell? If not, we will call on the counsel to carry on.

Mr. Kerzner: Thank you, Mr. Mitchell. I think next we are going to hear from Mr. Beck, who is the current chairman of the Ontario Securities Commission.

Mr. Bellmore: Mr. Kerzner, there are a couple of matters, tag ends from yesterday, that we had undertaken to clear up, and there is some further information that I think has come up this morning that should be clarified for the assistance of the committee.

The first point I should bring to the committee's attention is that in the Re-Mor case, which has been cited to you, there was not a 100 per cent compensation award, but rather the recommendation of the Ombudsman was that the provincial government compensate one third, without interest, of the loss in Re-Mor.

Mr. Ashe: He also recommended, as I recall, one third from the federal government on the same basis; but the feds did not put up their money and the province paid the two thirds. I think we have to complete the record.

Mr. Bellmore: Yes, that is correct. But the Ombudsman's recommendation allocating responsibility to the provincial regulators in that

case was only one third, and he allocated the other responsibility of one third to the federal regulators. No interest was awarded.

Mr. Philip: On that point, though, just so it does not just dangle out there, surely the fact that it was without interest was also related to the time factor. These people have been without their money for a much longer period of time and therefore the suggestion that somehow they are comparable in real dollars just does not make any sense whatsoever. They were out of pocket for a number of years, but not nearly as long as these people are still out of pocket.

The second thing is that it was two thirds, not one third, that they eventually received. The recommendation was based on the assumption that the federal government was partially responsible. When the federal government did not cough up, the provincial authorities did in fact pay two thirds. Two thirds without interest for a shorter period of time may well not be all that much different from 50 per cent with interest for a longer period of time because of the amount of money out of pocket.

1050

Mr. Bellmore: I will leave that for the committee. The second point yesterday was the date of registration, whether Argosy was registered by the registrar in 1979. This material was on microfiche and we have had a copy made of the registration application. It appears that it was renewed on July 30, 1979. I have a copy; if it is required, Mr. Decker, we could file it.

One other tag end from yesterday was the question to the effect, why was the term of probation for the noninvolvement of Mr. Carnie in Argosy only 12 months as opposed to a longer period? I believe the reasons for that can be found at page 30 of the Ombudsman's report in this matter.

If I could take you for a moment to page 30--it is the Ombudsman's final report--at the top of the page is a quote from the registrar at the time, which was contained in a letter from the registrar to the division solicitor. The registrar, at the top of page 30, indicates to the division solicitor, in reference to Mr. Carnie: "I cannot permit him to be employed or otherwise engaged by Argosy by reason of his past conduct, including a criminal conviction."

Then the Ombudsman goes on to report:

"Following receipt of this letter, the division solicitor who was involved in the negotiations spoke with AIL's solicitor on November 26, 1973. According to his memorandum of the same date, AIL was not prepared to agree to the ban against employing J. D. Carnie. The division solicitor's memorandum noted:

"After this conversation, I discussed the matter with [the registrar and his chief inspector] who are both determined that they cannot allow Carnie to remain with Argosy. Advisability of jeopardizing the prevention of the hearing discussed. Agreed that we should consider suggestions and amendment by [AIL's lawyer] with the view to avoid the hearing. I advised that a case for revocation is not strong."

That was the advice the registrar was getting from the division solicitor at the time when the registrar had proposed or propounded the revocation of Argosy's licence by reason of Mr. Carnie's involvement.

Then we have the negotiated settlement ensuing from this that was included in the formal order of the Commercial Registration Appeal Tribunal on December 10, 1973, which contained those conditions which, in the words of the Ombudsman, in some respects went beyond the legislation.

Mr. Philip: Was a legal opinion obtained, and if so, can you table that legal opinion that would indicate the legal position was not strong?

Mr. Bellmore: It would appear from the material available that the legal opinion was considered in a meeting and recorded in this memorandum from the division solicitor.

Mr. Philip: Who gave the legal opinion?

Mr. Bellmore: The division solicitor.

Mr. Philip: Is there, in those minutes, an outline of the reasons the division solicitor gave?

Mr. Bellmore: That would be contained in the memorandum.

Mr. Philip: Is the memorandum available?

Mr. Bellmore: It should be in the record material, I would think--if you will give me a moment.

Mr. Kerzner: There is a document at tab 25 of volume 3 of your collection of the registrar of mortgage brokers. It is the only reference I can find to opinion between division counsel and the registrar, and a second one is at tab 26.

Mr. Shymko: Are these documents we have?

Mr. Kerzner: No.

Mr. Bellmore: It is quoted in the Ombudsman's report. I am wondering if he filed that memorandum with his report.

Mr. Kerzner: No. They are contained in the volumes that are referred to in the closing paragraph of Mr. Wortzman's report, which was submitted.

Mr. Bellmore: I do not see the November 26 memorandum there, Mr. Kerzner.

Mr. Kerzner: All I am telling you is those are the only two I can find in the documents that the ministry either gave to the Ombudsman or made available to the Ombudsman that relate to--

Mr. Bellmore: The Ombudsman in his report, as noted, refers to a memorandum of November 26, 1973, from which he quotes. Perhaps, through you, I could ask the Ombudsman to make production of the memorandum he is quoting.

Ms. Boothby: Yes, we can certainly do that.

Mr. Kerzner: Is that the end of the clarification?

Mr. Bellmore: Yes, unless there are some questions for Mr. Mitchell.

Mr. Mitchell: There is one point I want to clear up from yesterday, and that point was the estimated size of the syndicated market. We do not have a clear number on it. The number that I did see--and I misquoted it; it is not that high--is \$10 billion to \$15 billion. The only numbers we have hard numbers on, I guess, are the market through chartered banks and so on in Ontario. That number of course is \$72.5 billion.

Mr. Shymko: The \$72.5 billion constitutes a market of unsyndicated mortgages?

Mr. Mitchell: That is the mortgage market, period. It is the general mortgage market. The difficulty with getting a handle on this type of market is because of the number of players in it. The estimates range from \$10 billion to \$15 billion.

Mr. Shymko: For syndicated?

Mr. Mitchell: Yes.

Mr. Shymko: It is quite a difference from the original figure we had.

Mr. Mitchell: It is still a lot of money.

Mr. Kerzner: Are we ready for Mr. Beck now? Can we have Mr. Beck?

Mr. Bellmore: Also with Mr. Beck is Mr. Salter, as indicated yesterday, who is vice-chairman of the commission and director at the time.

One additional witness who may be called upon to assist the committee is Mr. Cherry, who is the supervisor of the prospectus accountants at the commission. We have him here in case the committee has any questions concerning the way in which the prospectus accountant reviews audited financial statements and other material provided in the course of the commission's consideration of whether a prospectus receipt should be issued.

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Mr. Beck: I am Stanley Beck and I have been chairman of the Ontario Securities Commission since May 1986. I am not a career civil servant. I was not at the securities commission at the time these events took place, although I was a part-time commissioner. As I say, I was appointed chairman of the Ontario Securities Commission in May 1986.

On my immediate left is Charles Salter, who at this time is the vice-chairman of the securities commission. Mr. Salter is a career civil servant and at the time of these events, the greater part of that time, was the director of the securities commission. He is the gentlemen who is referred to on the file with respect to the syndicated mortgages. Mr. Salter was director at that time.

As I say, Paul Cherry is here, who is the chief accountant at the securities commission. The office of the chief accountant is a new position at the commission, created within the past six months. Mr. Cherry is a partner in Coopers and Lybrand, which is one of the major accounting firms in Canada, and is on a two-year leave at the Ontario Securities Commission. You may want to hear from him with respect to reliance on auditors' statements, what a comfort letter really means and what kind of comfort it gives and does not give.

I would like to deal with the role of the Ontario Securities Commission in the five and a half years we are talking about here, particularly with the syndicated mortgages and the series I and II debentures, although also with the registered retirement savings plan fund and the rights offerings.

I would like to begin with a preliminary remark or two about the securities commission and the function it carries out. Mr. Mitchell has indicated that the syndicated mortgage market is in the area of \$10 billion. Through the securities commission, we clear on a yearly basis debt and equity sold to the public in a similar area; it would be in the \$8 billion to \$10 billion area. That is just what is cleared through documents that have to be filed with us. The so-called exempt market--that is, securities that are sold to sophisticated investors like the Royal Bank, Sun Life and major financial institutions that do not have to clear with us because they can look after themselves--would probably be on the same order of magnitude.

I think it is a testimony to the job that is done by civil servants in the regulatory agencies that there is very little in the way of regulatory failure as that term is used by the Ombudsman. Certainly, people do lose money, and markets wax and wane. We are not guarantors. Some companies thrive, and some companies do not thrive. That is just in the nature of the system.

But what is said by the Ombudsman in his report is extremely serious as far as a government agency is concerned, because the words that are used in the report are those of "regulatory failure" or "unreasonable conduct." For any official or civil servant, that is a very serious charge. It goes to what they do every day, to the quality of their work and how they perform as individuals. If that charge is to be made, then it seems to me that a standard has to be set, such that we all know what is that standard.

What does "failure to act in a reasonable manner" mean in the context of the Ontario Securities Commission where, as I say, we are clearing some \$8 billion worth of debt and equity on a yearly basis? I will come back to that point, because I do not think it is something that is dealt with in the Ombudsman's report.

Let us talk about the syndicated mortgages for a moment. The total loss here is on the order of \$27 million--\$26.8 million, to be precise. The syndicated mortgages constitute \$21.6 million of that; so the heart of this matter, as far as the loss is concerned, is the syndicated mortgage market. Everything else we are talking about here amounts to \$5.2 million.

With respect to the syndicated mortgages, it is said that there is fault in terms of the securities commission in two areas. In the first place, it is said that the decision that syndicated mortgages were not securities was wrong. In fact, they were securities, and being securities, should have been required to go through a prospectus filing with all that would have meant, and with the greater disclosure, in the first place with the review by the commission and in the second place with review by the commission and greater disclosure to the public.

Second, it is said that in any event there was not adequate investigation by the Ontario Securities Commission staff to make the decision that it did make; to determine whether or not those participations in the syndicated mortgages were securities. I want to deal with both those matters, but before I do, I want to come back to the standard that is to be applied in both cases, in both decisions. The legislative standard with respect to the Ombudsman is one of unreasonableness. That is what the statute says and that

is the terminology that the Ombudsman uses, although he also uses the phrase "a regulatory failure."

When the Ombudsman submitted his preliminary report I went through the report and was greatly concerned, as I am today, about the standard to be applied to civil servants in any government agency when it is said that there is regulatory failure or that their conduct was unreasonable. I wrote the Ombudsman on March 3, 1986, and you have my letter in your file, a 21-page letter asking him to deal with those points. To this date, I have received no reply to that letter. In my view, the final report does not deal with those matters in an adequate fashion, and it is an extremely important matter for this committee to deal with them in making its determination as to whether in fact the conduct was unreasonable or whether in fact there was regulatory failure, because it is the essence of the matter.

I just want to read two paragraphs from my letter at this point, and I will return to it in the conclusion of my remarks. At page 3, in the first full paragraph I say, "In your preliminary report the conduct of OSC staff--"

Mr. Kerzner: Excuse me. It is at tab 19 of the main briefing book.

Mr. Beck: It is the first full paragraph on page 3: "In your preliminary report the conduct of OSC staff with respect to the various Argosy matters that were before the commission is, at different points in the report, characterized as 'unreasonable,' 'regulatory failure' and 'maladministration.' Nowhere in the report, however, is the standard that is to be applied to the OSC in reaching such conclusions articulated. That is the critical question which I respectfully suggest is essential that you address before making such findings with respect to the conduct of the staff of a regulatory agency."

At page 5, in the second full paragraph--and as I say, I will deal more with the points made in my letter in the conclusion of my remarks. I suggest that this is an essential point: "The question is not whether the ministry or agency made the right decision." I emphasize that. "Nor is the question whether, in hindsight, another course of action should have been taken. Nor is it one of whether another official, given the same factual situation, might have taken another course of action. The standard is one of unreasonableness"--that, as I repeat again, is the statutory standard--"beyond the limits of what be expected--with all that that connotes in the circumstances of a particular case."

I will turn to that again because it is a critical point. Let me now turn to the syndicated mortgages. Let me clear up some matters about the Securities Act which were talked about and Mr. Philip asked about, whether mortgages or security, and we talked about investment contracts. Under the act, a mortgage is a security. The definition of security is extremely broad; any interest in property, it says. It is too broad; it is broad because we want to catch everything and then decide what we want to exempt.

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So a mortgage is a security; no question about that. Mortgages are exempted when they are sold by registered mortgage brokers, so that is the scheme. If you are a registered mortgage broker as Argosy was and its chain of companies, you are exempted. So the question then becomes, why would we be concerned about syndicated mortgages? The answer is that you can package mortgages, or indeed any piece of property in such a way in terms of selling off small pieces to the public, but it does become a security. We have

regulatory concerns in terms of full disclosure to the public with respect to what is being sold and who is selling it.

Therefore we circle back to the definition of security and the appropriate category is investment contracts. Is the participation in a syndicated mortgage an investment contract? That was the issue that was before the commission. There is no question a mortgage is a security, but it is then exempted if it is sold by a registered mortgage broker.

If what is being sold is not just a mortgage pure and simple per se but is packaged in such a way that we can say it is an investment contract, then we say you have to comply with the Securities Act, file a prospectus and go through the review. The question became: were the participations in the syndicated mortgages investment contracts under the Securities Act? That was the essential question.

Mr. Philip: May I ask a question? Is the cutoff the number of purchasers--in other words, if I sell a mortgage on building X to one person it is a mortgage, to one company it is a mortgage, to two or three partners it is a mortgage, but if I start to merchandise it as a percentage interest in a mortgage, then it becomes a security, does it?

Mr. Beck: I wish it were that simple, Mr. Philip, and we might not be here if it were that simple, but that is one of the tests. If you begin to split it up into small pieces, that is one of the tests, but it is only one. It is not determinative of the issue. If it were determinative, then these probably would have been investment contracts right at that time.

Mr. Philip: I guess I do not understand where a private contract which is essentially what a mortgage is cuts off and where an offering to the public begins. If I convince 10 people in this room to participate in a joint venture, is that a public offering or does it have to be advertised?

Mr. Beck: It would have to be advertised; it would depend what their expertise is, what you are offering, how much they participate in the actual management; and if you are giving them a guarantee of a return. That becomes a critical factor, where we said it was an investment contract, and the courts said it is an investment contract, as opposed to taking a piece of a specific mortgage, which tipped it in many of the cases over the line to saying it is not an investment contract. I am not, I trust, being the least evasive when I say there is no one clear test. It is an extremely difficult question. Participation, yes, is one of the important factors. The wider your circle the more important that factor becomes; I do not think there is any question about that. So, that is where we are.

Now, in 1975, and indeed up to the current date, the question of whether participation in syndicated mortgages are a security is a very difficult question. On page 4 of his report, the Ombudsman says, "On the basis of the information established by the investigation, and having considered Dr. Anisman's opinion on the relevant legal questions, it appeared to me that there were grounds for making a report;"--I did. Now with respect to the issue of whether the participations were securities, I would like to quote from page 14 of Dr. Anisman's opinion. I do not think this opinion is in your brief; the Ombudsman refers to it in his report and relied on it. I am sure we can make it available.

Mr. Kerzner: Mr. Beck, I think it was distributed to the members at the opening of the sittings on Monday or at some point during the course of the day in a loose form.

Mr. Beck: Okay. I am reading from page 14, the first full paragraph in the middle of the page. I emphasize to you that what I am reading from is the opinion of counsel to the Ombudsman with respect to the question of whether syndicated mortgages constitute securities. He says:

"It should be obvious that a determination of whether a particular interest is an investment contract"--and I have indicated that is the relevant category--"necessarily involves matters of judgement, frequently of a refined nature, reflecting a balancing of sometimes contradictory elements of a particular scheme. The judgements may be particularly difficult in view of seemingly minor differences between schemes which may have a significant influence on a determination of whether an investment contract is involved, as can be seen from the decisions of the commission itself."

In other words, Dr. Anisman is saying it is an extremely balanced decision, very refined points are involved. The commission has gone one way in some cases and another way in other cases, as indeed the decision in Argosy Financial Group indicates.

He says, "Compare...Western Ontario Credit Corporation." I am going to come back to Western Ontario Credit Corporation, because the court decision there referred to was 1975. The commission's first decision in Western Ontario Credit was 1973, its second decision was 1974, affirmed by the court in 1975.

Those are critical dates because those are the dates when the decision was made with respect to Argosy, and in Greymac Mortgage Corp. in 1980, when it was decided that that particular scheme was not an investment contract, and compare with Fidelity Trust Co., the decision of the commission that it was an investment contract.

Here are critical words: "The three schemes involved substantial similarities and relatively subtle differences." In one case, the commission says, "not an investment contract"; in two cases, one of which was upheld by the court, the commission says it was an investment contract. That is the kind of issue we are dealing with. There is Dr. Anisman's opinion--and put very fairly, I could not have put it better--in terms of the difficulty of the legal opinion.

In the context of that kind of issue, what is being said is that the decision of the commission, of its staff, was wrong, simply wrong, given that kind of difficult issue with subtle differences.

Let me refer to Western Ontario Credit Corp. Western Ontario Credit was decided in 1973, a case brought, after investigation, on the commission's own motion, with respect to a London, Ont. company that was selling participations in mortgages, some of which were syndicated, but packaged in such a way--particularly with the guarantee by Western Ontario Credit, whether the mortgage had been placed at the time or not--that it was a mortgage.

Western Ontario Credit appealed to the Divisional Court, the Divisional Court reversed the commission on procedural grounds, the commission had to start all over again, held another hearing and found again that it was an investment contract. Western Ontario Credit appealed again to the Divisional Court of Ontario and the commission was upheld in a 1975 decision.

That is at the exact date, the same time, that we get the first and most thorough investigation by the commission with respect to Argosy. Western Ontario Credit is fresh in the mind of the staff. We know what the court

thinks and we know what we think as to what constitutes an investment contract.

That is the history of that matter at that time.

That is Western Ontario Credit. Then we come to Pacific Coast Coin which was referred to here on the opening day by Dr. Anisman, referred to by Mr. Philip, and accurately, as being a broadening of the view of the definition of security by the courts.

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Pacific Coast Coin began--it did not walk itself into the Supreme Court of Canada. That case was begun by the staff of the Ontario Securities Commission, the same people who reviewed the Argosy matter. It was brought to the commission. The case was won at the commission. It was appealed to the Divisional Court, won at the Divisional Court, appealed to the Ontario Court of Appeal and won there, and appealed to the Supreme Court of Canada, and the commission was successful, all the way through the piece in determining that the sale of bags of silver coins, that is what it was in Pacific Coast Coin. But it was a very important decision on the definition of investment contracts, and the leading case ever since, at exactly the same time.

The same counsel, I will refer to that in a minute, is the one that Mr. Salter, as director, relied on. It is in Mr. Salter's file as to who the counsel was making the decision with respect to Argosy. That also relates to the next point I am coming to, inadequate investigation.

So the commission was well aware of what constituted an investment contract, was taking, fighting and winning cases with respect to investment contracts in the courts, including participations in mortgages as Western Ontario Credit Corp. indicates.

In 1979, the commission did the same thing with C and M Financial Consultants, said that the mortgages there were investment contracts and, again, it was appealed to the court and the court upheld the commission. The same thing happened with Fidelity Trust, although no appeal to the court, at exactly the same time, approximately 1979-1980. Again, the commission moved against Fidelity Trust.

Then comes Greymac in 1980. Again the sale of participations in syndicated mortgages. But this time the commission said: "No, we do not agree with staff. It is not an investment contract." Why is it not an investment contract in Greymac? Because there was no guarantee, it was not an investment in a pool of mortgages, it was an investment in a specific mortgage. The interest from that specific mortgage flowed to the investor, which is exactly what the case was in Argosy. There was no guarantee, and the interest from the specific mortgage flowed to the investor.

We had our own counsel, John Stransman, the Stransman report as it has been referred to, look to see whether an adequate investigation was made. At the end of his report, Mr. Stransman says: "At the end of the day, given this difficult question, I would probably have made a different decision than commission staff made with respect to Argosy. I probably would have decided, at least at this date, that it is an investment contract."

But what does he say in terms of the nature of the decision, and the difficulty of the decision, and with respect to the decision that the commission itself made? I refer you to pages 90 and 91 of Mr. Stransman's report. You have that.

Mr. Kerzner: It is tab 16-B, volume 1.

Mr. Beck: Thank you very much. That is 90 and 91.

Mr. Kerzner: Pages 95 and 96 in the briefing book.

Mr. Beck: As I say, he said that if he had to decide it, given this difficult question with subtle differences, in fact he would have found that it was an investment contract. But this is what he said: "Nevertheless, at this time," and he is talking 1978-1979, "it was a fact that, although a SEC ruling had done so," that is in the United States, "no court had found a mortgage participation scheme to be an investment contract without the existence of some sort of guarantee. While this factor should have been only one of several considerations in the examination of any scheme, the fact remains, as described above, that the most reasonable rule of thumb to be applied to these schemes was to look for the presence or absence of a guarantee."

There was no guarantee here. In his report, Mr. Anisman says in 1978 it appeared that there might have been a guarantee with respect to one of the syndications.

In his report, the Ombudsman says it appears that there might have been a guarantee at some point.

Mr. Kerzner: Do you have different page numbers than the rest of us? You are in fact reading from page 85--

Mr. Beck: I guess it is just the Xeroxing.

Mr. Kerzner: --and page 86 of Stransman's numbering, which are 90 and 91 in the briefing book.

Mr. Beck: Okay. I am reading from 90 and 91. What am I reading from?

Mr. Kerzner: You are picking the page numbers out of the briefing book numbers. That is fine. We now have caught up to you.

Mr. Beck: Sorry about that.

Mr. Shymko: Which numbering are we supposed to be following?

Mr. Kerzner: He is using the briefing book numbers, not the Stransman numbers.

Mr. Beck: Pages 90 and 91 of your briefing book. The paragraph at page 90 begins, "Nevertheless."

What does the receiver say with respect to guarantees? This is in the middle of the paragraph on page 91. "...the Argosy receiver ultimately advised syndicated mortgage holders that their ability to recover moneys depended upon the realization of value from the property underlying the mortgage in question and not as creditors of Argosy having a claim for a 'guaranteed return' or 'guarantee against loss.'" That is from Stransman's report.

With great respect, how can the Ombudsman say the decision of the Ontario Securities Commission was wrong? It is one thing to say, as he did, that their counsel said he would have reached a different decision; it is

another thing for another lawyer to say he would have reached a different decision. However, in an area where the commission itself was reaching different decisions with respect to sale of participations in syndicated mortgages and where Mr. Anisman himself, as I have quoted to you, said it is an area where very subtle differences can lead you to different conclusions, how can anybody say the decision was wrong? The most you can say is that you do not agree with it or that you might have reached a different decision. Everyone recognizes--any securities lawyer who looks at it--that it is a difficult, complex legal question. To say it is wrong is to say it is a simple question and there is an easy answer, that if you lay the facts on a piece of paper they lead you to an inevitable conclusion. Nobody says that about syndicated mortgages.

I refer you again to page 14 of the opinion of Mr. Anisman who was and is counsel to the Ombudsman.

I would again like to quote from my letter to the Ombudsman at pages 6 and 7 with respect to this important point. This is at the bottom of page 6.

"The critical point is that his opinion"--that is Mr. Stransman's opinion, and now I would add, Mr. Anisman's opinion--"clearly sets out how difficult and unsettled the law is in this area (although somewhat more settled now than it was at the time the decision was made on Argosy)"--that is unquestionably true--"and that OSC staff was acting reasonably in coming to the decision that it did." I will come back to that point. "For your staff to conclude that the sale of the syndications was the sale of a security is not determinative of the issue. Such a conclusion merely indicates that its opinion is different from that held by OSC staff in the 1975-80 period. The matter is not one of right or wrong, but rather is one of differing opinions reasonably arrived at in a difficult jurisprudential area.

"For you to state that the sale of the syndications was 'never recognized as trading in securities'...is to imply that such sales were in fact the sale of securities. That is, OSC staff failed to arrive at the correct legal conclusion given the facts. I am confident in stating that no experienced securities lawyer in Toronto would make the statement that the law at the time required, or clearly indicated, a conclusion that the Argosy syndications were securities. The matter was, and is, a difficult legal question."

That, I respectfully submit, is indisputable, as it was and is a difficult legal question. To say that the staff is wrong is a conclusion simply, I say with respect, without foundation on the facts as we knew them then and indeed as we know them now. Again, one can look at the commission's decision on Argosy.

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Now we come to the second point with respect to the syndicated mortgages; that is, that there was inadequate investigation by the commission to reach the conclusion it reached, and that there were five separate complaints to the securities commission with respect to the matter. In fact, there was only one major time when the matter was looked at seriously in terms of whether it was security, and justifiably so as I will indicate, which is the 1975 period.

The question then becomes: If there was inadequate investigation, what

material was available to the commission at the time? In the first place, an investigator--perhaps we might turn to the Ombudsman's report itself, pages 40 to 41, where the matter is dealt with.

I am sorry; I have so many notes here. I will present my own as to what the investigator had and what he found.

In 1975, an Ontario Securities Commission investigator went out and talked to the Argosy people. The investigator had the solicitation letter and the investigator visited the author of that letter and examined him; he discussed the matter with him. Second, the investigator and the commission staff had the Argosy information package that went to prospective investors. Third, the OSC investigator and OSC staff had the trust indenture that was actually used by the company. Fourth, the interview, as the report makes clear, indicated in detail how this participation was being sold and the matter of solicitation. So that is a solicitation letter, the information package, the trust indenture, plus the interview, plus the sales literature.

I do not know what more the staff was supposed to have, and neither, with respect, does the Ombudsman because the Ombudsman does not say anywhere in his report what it is that was lacking or why that material was lacking. What information was lacking in 1975? What more was the investigator or the staff to have in 1975 than that documentation? What then happened in 1975 at that time? The investigator reports and the matter goes to the director.

I recall to you that this is exactly the time Western Ontario Credit, where the commission has found the sales and the participations to be mortgages, has been challenged twice in the courts and has won twice. It is also the time that Pacific Coast Coin is being brought to the commission and successfully to the court by commission staff.

Mr. Salter, as director, consults commission counsel, two staff counsel, given the investigator's report. The decision is made that it is not a security.

Who were those two counsel and what did they have to say? The Ombudsman's report does not tell you who the two counsel were and does not tell you what they had to say. Did the Ombudsman speak to those two solicitors? I can tell you who the two counsel were. They were Michael Bader, who at that time was with the commission, and now is senior crown counsel in the Attorney General's department; and Les Gord, who at that time was a solicitor with the commission and now is with a prominent Toronto law firm.

Mr. Bader, and this is a critical point, was counsel to the commission in Pacific Coast Coin. He initiated that case. He fought it all the way to the Supreme Court of Canada and won it. It is the critical case today on a definition of security. Those were the counsel Mr. Salter talked to. What they said to Mr. Salter, and what happened, and why that is an inadequate investigation, is nowhere detailed in the Ombudsman's report. We do not even know if the Ombudsman talked to Mr. Bader or Mr. Gord. Now, I spoke to Mr. Bader and Mr. Gord, and in fairness, they do not even have any recollection of the matter. It was 1975. They have some vague recollection of Argosy, but in fairness, they do not have any recollection of it at this date.

Mr. Philip: May I ask a question on that? You are condemning the Ombudsman for not talking to these people.

Mr. Beck: No, I am not. I do not even know whether he talked to them.

Mr. Philip: Can you table Mr. Bader's or Mr. Gord's opinion that was given to you?

Mr. Beck: I can certainly get affidavits from them as to their not recollecting their conversation with Mr. Salter at all. I would be pleased to do that.

Mr. Philip: If they cannot recollect what information they gave to you, how can you expect the Ombudsman to have the information from them concerning the information they gave to you?

Mr. Beck: That is exactly my point, Mr. Philip. The Ombudsman is saying that there was inadequate investigation. When Mr. Salter signed off and said, "This is not a security," the Ombudsman says, "That is inadequate investigation." Why would you leap to that conclusion if you have all this material that the investigators got? It then goes to Mr. Bader, who knows of Western Ontario Credit, is counsel when that is being fought, is himself the counsel in Pacific Coast Coin, and the Ombudsman says, "There is not adequate investigation." On what basis?

Mr. Philip: With respect, one might leap to the conclusion that there was inadequate investigation if you cannot produce a copy of the legal opinions that were given to you concerning whether it was a security or was not.

Mr. Beck: You do not have legal opinions in that way; that is not the way we operate on a day-to-day basis. There are many filings going through. The investigator goes out to investigate and does an investigator's report. It then comes to counsel and counsel consider the matter. They then discuss the matter with the director. They discuss--one assumes; I think we can reasonably assume--the essential facts and a decision is made, but there is not necessarily a formal legal opinion.

Mr. Philip: If a decision is made based on a verbal opinion, then surely there would be adequate notes on the file that would give the reasons for that legal opinion. It is simply preposterous for you to come here and tell this committee that we are supposed to believe you got a legal opinion, but that you do not have somewhere in your records the specific details of that legal opinion, either in the form of a written legal opinion or at least in the form of specific notes in your files that give the rationale for that legal opinion.

Mr. Beck: Mr. Salter will answer that.

Mr. Shymko: You have indicated we could obtain an affidavit, a statement. Would it be possible to obtain that from Mr. Bader and Mr. Gord?

Mr. Beck: Sure, but they do not have any recollection.

Mr. Shymko: They may get some recollection in preparation of a statement.

Mr. Beck: I do not think there is any difficulty at all. It does not surprise me that they do not have any recollection. You are talking about 10 years ago.

Mr. Shymko: It reminds me of Ronald Reagan.

Mr. Beck: It looms very large now. A lot of little people have lost money and one can feel for them. It is always the people who cannot afford to lose it who get hurt in these kinds of frauds, and that is what we see every time. They do the kinds of things sophisticated investors would never do. They put their life savings in and they get hammered and that is tragic.

On the other hand, you are talking about something that happened 10 years ago that did not loom large at the commission then. It was another filing going through. I am not saying that in an offhand way. As I have indicated to you, we handle \$10-billion worth of filings a year. The failures are minimal, given the amount of money going through, but you have to be realistic as to what actually happened. What the Ombudsman is saying is that there is regulatory failure here and that it is unreasonable. That is the standard. You cannot expect counsel now to recollect 10 years ago. There was nothing particular about Argosy at the time.

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Mr. Shymko: But surely in terms of their involvement in the two cases you have cited, namely Pacific Coast Coin and Western Ontario Credit, they would recollect the position and the way they normally would have treated Argosy and the definition of "security."

Mr. Beck: They would certainly remember that.

Mr. Shymko: Could they not state that in an affidavit?

Mr. Beck: You would have to ask them. All I am telling you, as truthfully as I can, is my conversations with them. They are not with the commission any more. They have no axe to grind as to the opinions they gave.

Mr. Philip: I wonder whether I can just summarize what your argument is and what you are trying to ask us to believe. You are saying that part of the reasons you cannot be condemned for regulatory failure is that you have obtained a legal opinion. The very lawyers that gave you the legal opinion cannot recall it. You have not been able to produce any written legal opinion and you say that you are not sure whether even those reasons can be found in the file somewhere.

Mr. Beck: No, that is not why I am saying. The Ombudsman says in the first place that the decision was wrong. I have been over that. Second, the Ombudsman says there was inadequate investigation. I have been through what the investigator did and the documentation he has, which is all the documentation that Argosy had and was supplying; all of it and we have it all in the commission. That is inadequate investigation.

Now the investigator reports to counsel. Counsel discussed the matter with the director, and they decide that on those facts it is not a security. That happens all the time at the commission. You do not have a written legal opinion from them. The lawyers get together and discuss the particular case. If the director is unhappy or uncertain, or if comes to me and I am unhappy or uncertain, perhaps I will say I want a written legal opinion. In fact, I did that not so long ago in the conversion of co-operative apartments and the selling-off of things in securities, in pieces of paper, because it is a difficult legal issue. It did not happen in this case and it does not happen in many cases, and that is all I am saying.

Mr. Philip: Surely an adequate investigation is one in which the

reasons for the decision that arises from the investigation are somehow listed. All I am asking is that you show us proof there were, in fact, legal reasons listed somewhere. I find it very difficult to believe that on such an important decision, if you had reasonable legal advice, that legal advice is not recorded somewhere. Otherwise, any public servant--I am sorry. You keep shaking your head instead of listening. I do not care whether you shake your head but I would at least like you to listen to my question.

Mr. Ashe: He figures you cannot shake and listen at the same time.

Mr. Philip: Some people have that problem.

Mr. Ashe: That is true.

Mr. Philip: If you want to convince us of that, what I am asking is that you give us proof. So far, I have not seen any proof.

Mr. Beck: The Ombudsman's report at page 42 cites--I have talked too long and I will let Mr. Salter talk because he was the director at the time--his handwritten note: "We have reviewed this [with two commission counsel]. In my view, these mortgage participations are not securities." He goes on to say in brackets, "I feel easier with this decision because (a) Argosy is registered as a mortgage broker, and (b) the quality of disclosure to the investors is rather good."

That gave the director a warm feeling, but the point is, and I will say it just once more, the commission had all the Argosy material. It was given to the two counsel. The two counsel then discussed the matter with the director and the director decided, on the basis of the discussion with the two counsel, that it was not a security. The fact that there is not a legal opinion on file is not surprising at all. Written legal opinions are not done except in cases where it is a new matter or there is extreme doubt. We simply do not ask for them. There is no time to do that.

Mr. Philip: Does that note not also suggest that possibly the rigours of deciding whether it was a security were less because of the fact that they really thought they were being regulated under the Mortgage Brokers Act?

Mr. Beck: I would not say so. WOCCO was registered, and I believe Western Ontario Credit was registered at the same time.

Mr. Philip: Then why put it in there?

Mr. Salter: Perhaps I can help with that. It was I, as director, who made that written note of the opinion given to me by staff counsel. Mr. Beck has taken you through the investigation done by the OSC investigator, the documents that he had, the questions that had been asked and answered. These two boys, who were then fighting and winning WOCCO and Pacific Coast Coin Exchange, came to my office with the investigator, laid out the matter for me and stated their opinion that these syndicated mortgage participations were not qua investment contracts to be regulated under the Securities Act.

The analysis was then complete. I made a note for the file. The question came up, I believe later, about creating a written analysis documenting this opinion. My view was that this would not have been a productive use of their time.

Mr. Philip: Since these particular offerings were being advertised in a manner that would give them the appearance of securities, would it not have been helpful to you, if for no other reason than to protect your own neck, at least to have a thorough investigation and get a legal opinion to find out whether they were securities?

Mr. Salter: With respect, I believe the investigation was thorough, and, also with respect, if civil servants spent all their time protecting their necks, we would never get anything done.

Mr. Philip: But here is a company that is offering it in public. You had concerns about an ad in the Globe and Mail, the offering of mortgage participation, in November 1978. Here is a company that is offering what look like securities publicly. You obtain legal opinions and you do not even put the notes of those legal opinions in your file so that you would at least have some further reference. You rationalize it by saying: "What the heck. We do not think these are securities, but in any case, the registrar of mortgage brokers is supervising them anyway. He will catch it if there is any monkey business going on." Is that not essentially what you did?

Mr. Salter: There are two points there. First, on the question of the advertising, some 20,000 copies, I believe the information is, of the solicitation letter were sent out. I note as well that in every newspaper across Canada, every day of the week, there are thousands of offerings of apartments, of condominiums, of other interests in real estate. I simply, with respect, cannot agree with the characterization that the broad advertising makes them investment contracts.

On your second point, the analysis was complete. The staff, the two lawyers who were fighting and winning the commission's investment contract cases, gave me their opinion. That completed the analysis. The afterthought in my note was quite separate and distinct from that. If there were any glitches, then there might indeed properly be comfort in the knowledge that the mortgage brokers' registrar had his eye on these people.

I think my note concluded with reference to the disclosure document, which, as I recall, identified the mortgage, the property, the borrower and the guarantors and included net worth financial statements of the borrower and the guarantors. It was that which was in my mind in making that note as to the quality of disclosure. I hope that helps with the important issue you have raised.

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Mr. Philip: With respect, the advertisements of the letters of solicitation also advertise stability of investment, a predictable return, regular monthly payments and that the term of the investment may be selected, in the same way that persons would suspect they were buying something analogous to a mutual fund, perhaps a mutual fund mortgage fund that is regulated by the securities commission.

Mr. Salter: Whatever the suggestion that might be drawn from the advertising, I believed then and I believe now that we properly looked at the whole package: the solicitation letter, the trust agreement and the disclosure regarding the mortgage participation. We properly looked at all that in framing the view that Mr. Bader and Mr. Gord arrived at.

Mr. Beck: You see, Mr. Philip, the bottom line in that is that what

was being sold was interest in specific mortgages with no guarantee. That distinguished the case from Western Ontario Credit which the commission had just won in court. The commission reached the same decision five years later in Greymac, which was before you in 1980. This was one that came to the commission and staff at this time, perhaps because of Pacific Coast Coin Exchange. They now brought the case to the commission and said, "We are saying to you, Mr. Commissioner, that this is an investment contract."

Staff said: "No, it is not. What are being sold here are interests in specific mortgages and there are no guarantees and, therefore, no investment contract." One can argue about that. I am trying to give the flavour of it.

Mr. Philip: Let me ask you this question then. If I advertise that the term of an investment may be selected in advance, am I not suggesting to the public that there is a pooling of investment and, therefore, it falls under a definition of being, in fact, a security?

Mr. Beck: I am sorry, sir. What was the first part?

Mr. Philip: I can make regular monthly payments and the term of the investment may be selected in advance. That does not suggest to me I am buying a specific mortgage; it suggests to me I am pooling, I am giving payments into a pool and the pool is purchasing parts or all of mortgages.

Mr. Beck: It could be either. You would really have to find out more.

Mr. Philip: Do you know of any way I can purchase a mortgage on a regular monthly payment plan?

Mr. Beck: I do not know. I am not sufficiently expert in that.

Mr. Philip: You are being presented here as an expert on the argument that there was no pooling of funds and, therefore, that this was not a security. I am suggesting that it was, in fact, being advertised as what amounted to a pooling.

Mr. Beck: Not even the Ombudsman says that what they were investing in was simply an undifferentiated pool and that they were not investing in specific mortgages. The Ombudsman does not say that and that is not what was being done. Nor does the Ombudsman say there was a guarantee. I am not saying it and the Ombudsman is not saying it. Anyway, the director's file is here, if people would like to check.

Mr. McLean: As a point of clarification, Mr. Beck, some time ago, you said, "This type of fraud," in your remarks. Could you indicate to me what you were referring to?

Mr. Beck: Mr. Mazurek, counsel for Mr. Berger and his people, said in his opening remarks on Monday that this was not a bad investment; it was a crime, a fraud. That is what it is, and whenever you have a crime, whenever you have a fraud--and I think Mr. Shymko said there were 24 counts of fraud in the trial--if you have an investigation after the fact with respect to those kinds of failures, there will always be signs somewhere. There are trails left in the sand, and after the fact, we are all wise.

I recently read Mr. Justice Estey's report on the failure of the Canadian Commercial Bank and Northland Bank. I have read the past reports on Atlantic Acceptance and Prudential Finance and the Morrison report on Seaway

and Greymac. There were always tracks left, and you can always read those reports and ask: "Where were the regulators? Where were the auditors? Where was the inspector-general of banks?"

At the end of the day, what you have is crime and what you have is fraud. It is extraordinarily difficult for regulators to come to grips with that, although when you go back and look, you will see the signs and will ask, "Why did the regulator not move quickly?" That always happens. If you cannot leap from the fact of fraud and loss to regulatory failure and responsibility, you are going to have people who commit commercial fraud and you are going to have small people lose their money.

The question for government is whether it is going to stand as insurer when people who can least afford it lose their investments? That is the essence of the question, not regulatory failure.

Mr. Shymko: On the same point of clarification, the elusive question, "Where was the chief investigator in September 1975?" is the one I am asking. I refer to where you stopped in your presentation, namely, that memo dated September 4, 1975. This is on pages 42 and 43 of the Ombudsman's report.

I understand, from your initial presentation, there is one factor, one point you have tried to impress us with, namely, that the judgement in this area is one of a refined nature. You have stressed that it is difficult among various schemes, that it is an extremely balanced decision in terms of defining whether these syndicated mortgages are securities, varying from one case to another.

You have stated that the judgement is refined, a refined judgment. Do you not think the judgement of the commission's chief investigator is critical and important in this delicate sort of scheme of evaluation?

Mr. Beck: Yes, certainly it is. He is not a lawyer. He is an investigator who obtains the facts, and what he was saying to Argosy was: "Just hang on here. Do not sell any more until we go to the commission."

Mr. Shymko: No. He said something else I am going to quote in a minute, but I want to know whether the chief investigator's judgement is of greater importance than the comment of a director, since he is investigating. He is the chief investigator, and he said, in a memo dated September 4, 1975, which is right at the top of page 43, that "it might be advisable to obtain written opinion from counsel before the material is sent to file."

This was his judgement. He says these things may arise again in the future. He says it "could possibly arise again" and advises the obtaining of a "written opinion from counsel before the material is sent to file."

Mr. Beck: Right.

Mr. Shymko: As I understand it, if I am correct, the director had seen it as a nonproductive use of time to provide such a written statement. Am I correct in assuming that?

Mr. Salter: I confirm that I said that, I noted that, and that was my view.

Mr. Shymko: In other words, when the chief investigator says, "Get a

written opinion before you send this to trial, because these things may occur again," the director says, "That is not a productive use of your time," of counsel's time. That was his opinion and he stands by it. My question to you is--in the delicacy of judgement, because we say we have made a wrong judgement, mistaken, a mistake, human error, poor judgement--do you not think the judgement of the chief investigator is important because of the delicacy of this issue?

Mr. Beck: Yes, certainly the--

Mr. Shymko: And that his judgement and advice to have written opinions should have been followed?

Mr. Beck: He was not saying he wanted a written opinion because--

Mr. Shymko: That is what he says in this memo.

Mr. Beck: --because it was a difficult question. He is saying: "Look, Argosy is going to continue to sell because it is in the business. This is going to arise again. Put an opinion on file so we will have it when it arises again." He was not questioning the judgement that was made. He was saying, and he was perfectly accurate as it turned out: "This matter may well arise again. These people are selling these participations. Complete the file. Put an opinion on it."

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Mr. Shymko: But that is the dilemma today, and Mr. Philip is trying to ask you to give us something on paper, an opinion. You can say (inaudible) have already forgotten, a terminal case of amnesia.

Mr. Beck: The director, who is a lawyer and who has talked to Bader and Gord, says, "Thank you, it is not needed. We are content on this matter," and signs off on it. That does not strike me as extraordinary. The investigator is a former police officer who has now joined the commission.

Mr. Shymko: Apparently the Ombudsman gives greater weight to this than you do, for some reason. Maybe that is the difference of what we term his high standard.

Mr. Beck: No. I do not think he gives greater weight. He is setting out the record here as to what happened, but as I say, there are two questions. First, was the legal decision wrong? I say there is simply no basis for that. Second, was there inadequate investigation? Again, I say the record simply does not indicate that. You can arrive at a different conclusion as to whether it was a security, but where is the evidence of inadequate investigation?

The investigator got all the Argosy material. The director talked to the two experienced counsel and they made their decision. You can disagree with that decision, but unreasonable regulatory failure? Where is the inadequacy of it? All he is saying there is, "Have Bader put his oral opinion into writing." It would have been the same opinion.

Mr. Ashe: It would have been the same decision.

Mr. Beck: Exactly. The same opinion, the same decision. All he is saying is: "Cover the file. Get it in writing." The director said: "That is

not a good use of your time. Do not do it." But it would not have changed anything and it does not turn this into regulatory failure. That is the critical point.

Mr. Salter: Mr. Beck, I can add this, that the two counsel, Mr. Bader and Mr. Gord, were not on the chief investigator's staff. The chief investigator can very well suggest that those lawyers should spend 10 or 20 hours producing a written opinion. It was my decision as director that it would not have been a productive use of their time.

Mr. Philip: One of the criteria that a court would look at as to whether something is a security is whether it is merchandised as a security. Would you agree that is one of the criteria?

Mr. Beck: Yes, I agree.

Mr. Philip: Would you also agree that Argosy was being merchandised like a security?

Mr. Beck: Yes, I agree with that.

Mr. Philip: Are you, as a commission, not concerned when someone merchandises something like the product you are supposed to supervise, namely, securities, if that in fact is not the product? Is there not some obligation that you have there to investigate thoroughly that kind of operation? If somebody is selling what appears to be insurance and it is not insurance, then surely the registrar of insurance has some concern about that.

Here you have somebody who is selling what certainly by all appearances seems to be a security, and you are saying it is not a security. What responsibility do you have in that regard?

Mr. Beck: I agree with you that is one of the important indicia. If something is being marketed like a security, then the commission becomes concerned and takes a hard look, which is why there was the investigation in 1975, which is why the investigator went out and got all the material, interviewed the Argosy people involved and then referred it to legal counsel, who then discussed it with the director.

That was an important indicium, and I assume it loomed as an important factor in 1975. If it came to me today, it would certainly loom as an important factor. The marketing is, as you have said, relevant. I cannot disagree with that, but it is not by itself determinative.

Mr. Philip: Since part of the argument is, after all, that the registrar of mortgage brokers was in charge of monitoring this, can you trace for us specifically the steps you took to find out exactly what was being done by the registrar of mortgage brokers?

Mr. Salter: No inquiry was made.

Mr. Philip: So you just assumed it was a mortgage and, therefore, the other division of your ministry, namely, the registrar of mortgage brokers, had to be on top of it because, after all, it fell under his responsibility?

Mr. Salter: Yes.

Mr. Philip: You never once thought of calling?

Mr. Salter: I do not recall that arising.

Mr. Philip: Were you aware of any problems concerning any of the principals in this company?

Mr. Salter: In 1975, I do not believe we were. No.

Mr. Philip: At what time did you become aware of Mr. Carnie's problems, shall we say?

Mr. Salter: I believe that turned up in connection with the 1978 preliminary prospectus sent in by Argosy and the concurrent application for registration as a security issuer. The police check done at that time would have turned up the 1971 conviction.

Mr. Philip: Do you feel your actions might have been any different at any point had the registrar of mortgage brokers come to the conclusion, "It appears as though these fellows are selling something that looks somewhat like securities and we had better advise the securities commission"?

Mr. Salter: I would not likely have been impressed with the view of the registrar of mortgage brokers on the difficult question of investment contracts.

Mr. Philip: Would you have been impressed on any of the information concerning fraud, concerning the operations of this company, concerning the relations of this company with the parent company? Would that have concerned you?

Mr. Salter: My view as to the importance to be attached to the fraud is in the record. I would have kept Carnie out of business.

Mr. Philip: At the time when the debentures were being sold, what knowledge did you have of Carnie's operations at that point?

Mr. Salter: We had the knowledge gained from the facts around the criminal conviction. We had the knowledge of the 1975 syndication of mortgages. The 1978 prospectus included a full description of the Argosy operations. I think those collectively are the sources of our information.

Mr. Philip: Did that description of the Argosy operations include the relationship of the parent company to the father or son company?

Mr. Salter: I do not recall that, Mr. Philip. It probably would have.

Mr. Philip: Would you have been aware, then, at that time that Carnie was apparently operating company A by controlling company B, controlling the parent?

Mr. Salter: I assume that it was so described in the prospectus. Yes, of course.

Mr. Philip: Would you have been aware that there was a prohibition by the registrar of mortgage brokers for him to, in fact, be in operation in company A?

Mr. Bellmore: I do not believe that was the evidence we have heard. I believe he was ordered to not be involved for one year, and that was in the period December 1973 to December 1974, but the debentures were not before the commission until some time in 1977-78, at which point that probationary order had terminated.

Mr. Shymko: Are you saying the commission was aware of the conditional registration of 1973?

Mr. Bellmore: No. I am simply saying there was no order extant in 1977-78 when this matter came into effect which prohibited--

Mr. Philip: I am trying to find out exactly what you were aware of. Were you aware that there was a conditional agreement that he not be operating for at least a period of one year?

Mr. Salter: Certainly not, Mr. Philip. We did not make any independent verification of the statement in the prospectus that whichever Argosy company was registered under the Mortgage Brokers Act, and indeed the whole legislative scheme of government agency review of the public offering documents does not contemplate the administrators making that kind of independent review.

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If ABC Computers files a registration statement in Washington, the Securities and Exchange Commission does not send over to the United States Patent and Trademark Office to see whether ABC Computers does have the patents it claims on such-and-such hardware or software. If XYZ Exploration files a prospectus with the Ontario Securities Commission referring to its 18 nonpatented mining claims in Tisdale township, Porcupine mining division, we do not send up to the mining recorder at Timmins to confirm that XYZ is indeed the recorded holder of the claims.

The scheme of the statutes is to impose civil liability and expose to criminal prosecution the directors, senior officers of the company, the experts, lawyers and accounts whose opinions are in the prospectus. The statutes simply do not and the government agencies are not staffed at a level to permit independent verification.

Mr. Mitchell mentioned to you yesterday that for the last five years we have been doing things differently as far as matters within the same ministry, but we did not then make an independent check as to the standing of Argosy or Carnie under the Mortgage Brokers Act. I hope that bit of background I have given may help in understanding the regulatory scheme as far as statements of fact that are made in prospectuses.

Mr. Philip: I have one last question. Is the very fact that for the last five years you have been doing things differently not testimony to the fact that perhaps the way in which you were doing things at that point was inadequate?

Mr. Salter: A lot may turn on the adjective you choose. I believe we are doing things better now. I cannot accept the fact that we are doing things differently now establishes regulatory failure in 1978.

Mr. Shymko: In other words, as part of the procedure, you rarely would communicate with the registrar when there was an investigation by the

commission, as in the case of the summer and fall investigations of Argosy.

Mr. Salter: Matters would likely go differently in a commission investigation than they would in the corporate finance context, the filing of a prospectus. For example, on the registered retirement savings plan matter, perhaps if that had come to the commission from the investigation branch, matters would have been handled rather differently. The fact was that the question was raised by Argosy's solicitors themselves, who came to the commission and said: "Look, these RRSP interests we have been selling the last couple of years may be securities. Here we are. May we have a prospectus exemption?" To come back, I hope more directly, the kinds and extent of checks that will be made will depend on the context in which the matter comes up.

Mr. Shymko: Obviously the situation is quite different now than it was in 1975, but you have indicated that even in 1975, the depth of an investigation which would include the registrar would vary, depending on what you are investigating.

In the RRSP, you would have followed a different process and an extensive process of investigation. But with syndicated mortgages, in the case of defining whether these were securities, you had a policy of, I do not know, surface investigation or whatever you want to call it, with no intention and no need to contact the registrar to find out about some of the problems he had, including the conditional registration and statements that one of the majors in it, namely Mr. Carnie, should not even be employed by Argosy--a very strong statement by the registrar.

In that area, you normally never would have contacted the registrar?

Mr. Salter: That is an important point. I believe the commission staff investigation was thorough. As to the question of whether these pieces of mortgages, these syndications, ought to be regulated under the Securities Act, I cannot tell you for sure whether the facts of the registrar's problems with Argosy would have weighed with us then. I am certain of this, though, that they would have not have a bearing on the legal question of whether these interests were investment contracts.

Our staff may form personal views about people or companies, but we are not in the business of taking losing cases before the commission. The matter would have to be clear--yes, in the unqualified view of staff, it is an investment contract--before we chase after them and risk losing the case before the commission or in the courts.

Mr. Shymko: In other words, you are telling me that even had the chief investigator, the directors and the vice-chairman of the securities commission been in touch with the registrar and found out all the details, that would not have changed your opinion and your definition on whether these syndicated mortgages were securities?

Mr. Salter: That is absolutely correct.

Mr. Chairman: Mr. Beck, you may continue, please.

Mr. Bellmore: Excuse me, Mr. Chairman. We are just about to deal with another area of the Ombudsman's report. Did you intend to break for lunch at a particular time? Would this be convenient before being in the middle of it?

Mr. Chairman: I guess this would be a good time to break.

Mr. Beck: Perhaps I just might make one concluding sentence on the syndicated mortgages. As Mr. Shymko has pointed out, there is no question that the communication between the OSC and the registrar was less than it ought to have been. There is simply no question about that, but that simply does not lead to a positive answer, in the first place, with respect to whether the legal decision was wrong. I have dealt with that; I think that is simply an untenable position.

Second, nor does it lead to the fact of inadequate investigation of facts necessary to determine whether you have got an investment contract, and that is the point Mr. Salter just concluded with. Knowing the facts about Mr. Carnie's dealing is not going to turn what is not an investment contract into an investment contract. The point of the Ombudsman's report is inadequate investigation. I say to you, even on the face of the Ombudsman's report, there is not sufficient evidence of that. It is not clear to me what the evidence is at all. It is simply an assertion on the part of the Ombudsman, which is a critical fact.

Mr. Shymko: If I could just recall, I think you have agreed there is a serious nature of impact that may have been related to Argosy because of the lack of communication and the lack of co-ordination between the commission and the registrar's office.

Mr. Beck: Yes, I would agree with that. I just say it does not go to the question of whether the syndicated mortgage is an investment contract, but I would admit that today--and I will come to that--but it does not relate to the question of whether what we have got here is an investment contract or inadequate investigation to determine the facts to determine that question.

Mr. Shymko: So you feel the Ombudsman's sort of differing opinion on the syndicated mortgages, which is obviously different from the commission's, has nothing to do with the lack of communication or co-ordination between the two offices in that specific area defined?

Mr. Beck: In that specific area, that is right.

Mr. Shymko: We certainly would like to hear your opinion of the Ombudsman's--

Mr. Beck: It cannot make a legal difference, but we had all the facts, as I have indicated. The investigator had every major document, knew how it was being sold and talked to the Argosy people. It is all there.

Mr. Shymko: I hope the Ombudsman is making note of that particular answer.

Dr. Anisman: As you may have noticed, Mr. Shymko, I have been making long and, I hope, careful notes.

Mr. Philip: I have one further question. If the investigation was adequate, as you say, when the Supreme Court came down with a decision in 1976, why did you not at least re-examine that original decision in the light of the Supreme Court?

Mr. Beck: The principals were the same, as far as the mortgage participations were concerned. As I say, Mr. Bader was our counsel there. Mr.

Bader was one of the two counsels who talked to Mr. Salter at the time. The Supreme Court's decision is broad in opening up what is called, for lack of a better term, the risk theory of securities investment.

Again, the fact that these were investments in specific mortgages with no guarantee was the essence of the matter. That fact did not change between 1975 and 1976, Mr. Philip.

Mr. Philip: Maybe we can argue that after lunch.

Mr. Beck: Okay.

Mr. Chairman: We will recess for lunch.

The committee recessed at 12:21 p.m.

STANDING COMMITTEE ON THE OMBUDSMAN
ARGOSY FINANCIAL GROUP OF CANADA LTD.
WEDNESDAY, APRIL 15, 1987
Afternoon Sitting



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Staff:

Kerzner, T., Legal Counsel; with Perry, Farley and Onyschuk

Evans, C. A., Research Officer, Legislative Research Service

Witnesses:

From the Ontario Securities Commission:

Beck, S. M., Chairman

Salter, C., Vice-Chairman

Cherry, P., Chief Accountant

From the Ministry of Consumer and Commercial Relations:

Bellmore, B. P., Legal Counsel; with Lockwood, Bellmore and Moore

LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON THE OMBUDSMAN

Wednesday, April 15 1987

The committee resumed at 2:06 p.m. in room 151.

ARGOSY FINANCIAL GROUP OF CANADA LTD.
(continued)

Mr. Chairman: We will resume our hearings.

Mr. Kerzner: Before Mr. Beck continues, Mr. Ashe asked some questions about some going rates in 1978 and 1979. While we are going to get something typed up, generally speaking, over the two years 1978 and 1979, rates rose with a few little peaks and valleys here and there. The chartered bank rate on prime business loans at the beginning of 1978 was 8.25 per cent rising to 13 per cent in September 1978 and it hit 15 per cent by the end of 1979. Over the same period, trust company guaranteed investment certificates for five-year terms started at the beginning of 1978 at 8.75 per cent and rose reasonably steadily with some peaks and valleys to roughly 11.25 per cent by the end of 1979. Conventional mortgages, which I think are first mortgages, at the beginning of 1978 were 10.32 per cent and had reached 12.25 per cent by September 1979 and ended the year at 13.50 per cent.

Mr. Beck: Having dealt with the participations in the syndicated mortgages, I now would like to turn to the series I and series II debenture filings and the adequacy of the review by the Ontario Securities Commission and the question whether the securities commission should have used the jurisdiction it has to turn down the filing altogether as not being in the public interest, and as the Ombudsman's report described it, not giving investors a fair chance just on the facts that were known.

I am going to start at page 50 of the Ombudsman's report which deals with the series I debentures. Before I refer to the Ombudsman's report, I want to repeat the point I made this morning with respect to the syndicated mortgages, that what we are talking about here is unreasonable conduct on the part of the regulators, a failure to conduct a reasonable review of these filings. The question is, was the review unreasonable? It is not whether someone might have done something differently or have come to a different conclusion. That is not the standard that by law is imposed on the Ombudsman. I think this is a critical point when one looks at the review that went on with the series I and series II debentures.

Having said that, let me turn to page 50 and the series I debentures. As is the usual case with any filing that comes in to the prospectus department--we call it the filings branch--the file is assigned to a prospectus accountant and a prospectus solicitor to review the matter. They sent a five-page deficiency letter to Argosy Finance. It was not a cursory review, but a five-page deficiency letter. A deficiency letter indicates where staff has concerns with the particular filing and questions they want answered.

At page 50, we see in the bottom paragraph, "These deficiencies required Argosy Finance to establish a minimum to be subscribed before the corporation could receive any funds in the offering, to provide further information about the company's mortgage business and management policy, and to clarify the

financial information." Most glaringly, as the Ombudsman points out, there was a current position deficiency of \$790,000 and the company was borrowing from its directors, officers and shareholders.

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That is not something the commission skipped over, missed or was not concerned about. The commission spotted those things right away and sent a deficiency letter. Moreover, at the top of page 51 the commission says, "We require proof that this issue will be in the public interest." The commission is on top of the matter and is doing its job.

The Argosy solicitor replies. The bank is contacted and the bank says, "If they get this public financing, we will extend the line of credit." Their major bank, the Royal Bank of Canada, all through this piece is not pulling the plug on this company. Nobody knows the affairs of Argosy better than the bank. There is not a securities commission in the world--if we had 20 times the staff, we would not know the position of a company better than its bankers.

The bankers get weekly and sometimes daily reports of what is happening, particularly when a company is in trouble. The Royal Bank of Canada is not pulling the plug. It is extending the line of credit, subject to the public financing. That is a very important factor as far as the commission is concerned. As we have heard from some of the investors, it is a very important factor as far as the investors are concerned that the company's banker has some confidence in it.

There is toing and froing between the commission and the solicitors. It turns out that Mr. Carnie had a previous conviction for a crime--a commercial crime if you like; fraud, theft by conversion--and the commission staff, far from being negligent, unreasonable or not knowing the facts, says to the commission, "We recommend that this person not control a public company and that no receipt be issued here." That is what the commission does.

I ask you whether that is somehow a failure to come up to an appropriate standard. On that point, the director holds a hearing and the director refuses to register Argosy as a securities issue. It does not let the matter pass. It refuses to recognize Argosy. Argosy then appeals to the commission. Now, when I use the term "commission" here, I am using it in the sense of the commissioners who form a quasi-judicial tribunal to hear cases and appeals from staff. There are two full-time commissioners and seven part-time commissioners who form the body known as the commission in that sense.

A three-person panel of the commission hears the appeal and disagrees with the recommendation of the staff, and through the staff the recommendation of the director who at that time was Mr. Salter who is on my left. He now is the vice-chairman. The commission--one can agree or disagree with it; that is not really the issue before us--says that conviction for a crime should not bar a person for all time from participation in this business and that it should not be "an absolute bar." They send the matter back for consideration by the commission.

Argosy withdraws its initial prospectus and files a new prospectus. It starts all over again with the same kind of review I have talked about. Again, as they always are, they are checked by two staff members, an accountant and a lawyer. I read at the top of page 54 because it is important: "The accountant

listed four minor items in a deficiency letter...no reference was made to unresolved deficiencies from the previous year."

When I took a look at that and when Mr. Stransman took a look at that, we both thought the Ombudsman was making a good case at that point. After going through the detailed examination, and I underline that, on the first filing--careful examination; five pages of deficiency--and then taking the matter to the director and to the commission with the commission ultimately turning it back and saying, "Review again," it looked to us as if the prospectus staff looked as if they had said, "Okay, if this is what the commission wants, we are going to let it go through."

That is the way it was expressed in the Ombudsman's preliminary report. When the Ombudsman sent his preliminary report to those involved at the commission, Mr. Widdowson, who was the prospectus accountant involved, took issue with what the Ombudsman said, and in effect took issue with what I said in the letter to you that I have here. It was said the other day that I agreed with the position of the Ombudsman and I did, but it just shows you that even in a careful investigation, which I am sure the Ombudsman did, when you are looking at something 10 years after the fact, you cannot talk to everybody and get every single piece of information.

Mr. Widdowson then wrote to the Ombudsman and I give you this letter. I do not think it is in your file but it ought to be distributed to you. If there are not enough copies there, I will wait until it is distributed. It is important and it shows how difficult investigations 10 years after the fact are and how one can come to perfectly reasonable conclusions that are not necessarily accurate, given the passage of time.

The Ombudsman, it is probably not necessary to add, has this letter because it was sent to him in August 1986. You will notice that in the second paragraph Mr. Widdowson says, "I was the accountant involved in the review of both filings of the series I debenture issue and would like to respond to this area of your report."

I may say that subsequent to this, Mr. Widdowson ultimately was promoted to senior accountant, senior individual in the investigation branch.

Mr. Widdowson notes that the commission's own counsel, who was retained at the time of the Ombudsman's report, also agrees with the Ombudsman that "the question relating to the current position deficiency"--I have pointed this out to you--"was not adequately addressed.

"Both your report and the one prepared by Mr. Stransman suggest that because there were very few deficiencies raised on the refiled prospectus, a proper review was not done."

I am guilty of the same thing. I said the same thing in my letter to the Ombudsman because I never talked to Mr. Widdowson.

"Unfortunately," says Mr. Widdowson, "Mr. Stransman also did not have any discussion with me"--the "also" being the Ombudsman and Mr. Beck--"with respect to my review before issuing his report."

Mr. Widdowson then goes on to say this:

"1. I was the prospectus accountant on both filings for the series I

debentures, and therefore was familiar with the current position deficiency problem.

"2. ...I reconsidered all deficiencies and responses on the first filing.

"3. The refiled prospectus"--the one being talked about at the top of page 54 and the one that I talk about and Stransman talks about--"included more recent figures than the original prospectus and indicated that the current position deficiency of \$790,142 at December 31, 1976, shown in the original prospectus, had been reduced by almost \$500,000 to \$292,919 at December 31, 1977. I considered this to be a very substantial improvement over a one-year period.

"4. One of my concerns on the original filing was that the company had been borrowing funds from directors, officers, shareholders and others....The refiled prospectus indicated that no further loans had been made during the year ended December 31, 1977. This fact also gave me comfort since it was apparent that the company was no longer having to borrow from these individuals to maintain its operations.

"5. The letter from the Royal Bank of Canada, indicating that it was prepared to double"--I underline "double"--"the line of credit and that it had utmost confidence in the corporation and its officers was considered to still be valid. Updated figures in the refiled prospectus indicated that the bank loan had still not been called. The 1978 financial statements subsequently filed with the commission disclosed that the line of credit was in fact doubled."

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So the bank was not just making a statement; it in fact doubled the line of credit.

"6. The amount of the current position deficiency at December 31, 1977, was disclosed on page 5 of the refiled prospectus."

Any purchaser who got the prospectus on the series I knew that there was a current position deficiency with respect to this company, if anybody read it. That has to be a red flag to anybody when you are talking about a current position deficiency in a company in which you are buying a debt instrument.

"On page 6 of the prospectus"--this is the prospectus that goes to all investors--"it is stated that '...until such time as long-term financing is obtained, the company will continue to operate with a current deficiency.' Therefore, any potential investors reading the prospectus would have knowledge of the deficiency and the fact that it could continue and could have taken this risk factor into account before investing."

Then Mr. Widdowson goes on to report what was in his filing.

Finally, I take you back to page 1 of the letter, the third full paragraph, because you will recall that on the first filing of the series I, there were five pages of deficiencies. Mr. Widdowson says to the Ombudsman:

"On page 23 of your report you indicate that when the refiled preliminary prospectus was received 'there was no reference made to any unresolved deficiencies from June of the previous year.' The reason for this is, in the view of the staff reviewing the prospectus, all deficiencies had

been adequately resolved at the time of the first filing. John M. Stransman confirms this fact and sets out his reasons on pages 23 to 27 of his report."

I refer you to that, which you have in your material.

There is Mr. Widdowson's letter to the Ombudsman, and what is said at the top of page 54 has to be seen in that context.

As I have said, it may be that the Ombudsman and you gentlemen do not agree with the decision that the commission made with respect to allowing Mr. Carnie to be the person standing behind this kind of company and feel that it should have been stopped at that point. That is something reasonable people can disagree on. But the questions you have to ask yourself, in terms of the standard of care taken by commission staff, are: "Was it unreasonable? Did they just let this thing pass? Were they unaware of the financial position of Argosy Finance? Were they unaware that Mr. Carnie had been convicted? Did they not ask for reassurance from the company's lawyers, from its main banker and from its accountant? Did they not receive those assurances?" The answer to all those things is, yes, they did. I ask you, is that unreasonable conduct?

We cannot ask that question from the perspective of April 1987 when a large number of unfortunate small investors have been bilked by fraud and are asking the government for recompense. You have to ask yourself that question from the perspective of the date of the filing and the actions that the regulatory agency took. That is the relevant question, not today.

Whether these people ought to receive some form of payment, ex gratia or otherwise, is a very different question, and it is a question that involves the sympathy of all of us for people who have been the unfortunate victims of fraud. It is a different question and might receive a very different answer, but it is not the question that, at this point at least, is before this committee, and it is not the question the commission is called to answer. The question the commission is called to answer is the quality of its review. Was it unreasonable? I suggest to you on the series I there is no evidence of that whatsoever.

I would like to turn to the series II debentures, because what I have just said with the series I is in spades in the series II debentures. I turn now to page 56 of the Ombudsman's report.

In the words of the senior person in the prospectus department, the series II debentures received the most detailed review that any filing has ever received in the history of the securities commission. It was in the commission for one year. Most filings are in the commission for 30 days at a maximum. Many filings are in the commission for 10 days and out. This is one year. It is absolutely unheard of.

There were over 100 deficiencies, which is again unheard of. There were so many deficiencies that when they were answered, in effect, the refiling was treated as a new prospectus. They had to rewrite the thing to satisfy the commission. They had to start all over again before it was cleared at the end of one year.

If I might read from point 6 on page 56, the Ombudsman says, "A review of the commission's files indicates that this filing received a great deal of detailed scrutiny by the commission's staff over a period of approximately one year, an unusually lengthy time." So it is not a case of the commission quickly passing over a filing, of not being aware of what were the enormous

difficulties. Indeed, as it says on page 57 of the Ombudsman's Report, "A 'separate risk' factor section was also to be included in the prospectus to detail the risks flowing from noncompliance with" policy 3-25.

Mr. Anisman said yesterday that even with all that the commission required, there was not adequate disclosure. We can dispute that as to whether there was or not. Let us assume just for the sake of argument that Mr. Anisman is correct and there was not, that there should have been more. But that is not the question. Maybe there should have been more, but it was all over the place on those two prospectuses that this was a company that was in financial trouble, that there was a current position deficiency. There were separate risk factors.

How much more does one need, or would it have made any difference? We cannot put a skull and crossbones and mark "poison" on the face page of a prospectus. You tell people the situation.

Whether we ought to have passed it at all is the final question I will come to and a question that is raised by the Ombudsman. I want to stress the point, and I am sorry if I am repeating and becoming somewhat tiresome on it, that what we are talking about here is the standard of reasonableness and the degree of care the commission took. It would be hard to have spent more time or to have taken more care than was taken on this particular filing.

If we turn to page 59, we see that in June 1979, a further deficiency letter was sent to Argosy's solicitor, in which the staff outlined reasons for its opinion, etc. Finally, as I say, we have a fresh preliminary prospectus being filed.

At that point the Ombudsman's report turns to the registered retirement savings plans, and I will come back to that. We jump from there in the narrative from the series II debentures to page 64 of the Ombudsman's report.

Again, the prospectus solicitor is particularly concerned about the allowance for doubtful accounts, because this is a company that is in trouble. That is clear and it has been identified, and further comfort is requested from the company's auditors.

Mr. Cherry is here with me. I know you gentlemen have had a good deal of concern about a comfort letter and what it means, and I am going to ask Mr. Cherry, who is, as I say, a partner with Coopers and Lybrand, to talk about that.

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We come down to page 65. The refiling takes place in July 1979. In October 1979, we get a further deficiency letter being sent.

I would like to call your attention to page 66. I am not going to take your time and read those three main paragraphs, but those paragraphs set out all the material, all the details, the prospectus staff asked to be provided by Argosy, and it really goes through chapter and verse of its business. It is saying, provide us with all these details: further information on specific loans, copies of your legal opinion, how and when the valuations of the properties were made, the current position, the current bank loan, interest on overdue receivables, information about interest rate, the floating rate on debentures and on and on on page 66, where there is great detail asked for.

Again, the solicitors come in, their accountants come in, this business goes on, as I say, for a year, and information is provided, as we read here. I do ask you to read those three paragraphs on page 66.

As we discussed on the first day and Mr. Kerzner raised with Mr. Anisman, the footnote in the series II debentures detailed the extent of related-party transactions. Subject to correction, I think the figure was that about 50 per cent of these transactions were related-party transactions. The figure that sticks in my mind is 50 per cent of the financing.

I will not deal with the comfort letter, except, again, it is what you ordinarily get from accountants, and the accountants are really saying: "Look, we would have to go back and do an entirely separate audit here on the doubtful accounts. We have no instructions to do that from our client. We see nothing in our ordinary review that would cause us to do that or to have concerns about the allowance for doubtful accounts." It is what is referred to in the trade as a negative comfort. "We see no reasons not to give" the kind of letter that we have been given.

Finally, on page 72, the prospectus solicitor signs off on the prospectus. Then he states, "I have questioned both these issues"--he is talking about the allowance for doubtful accounts--"and although I have personal reservations about these problem areas, I have signed off this docket on the grounds that [the auditors have] given a clean audit report, a comfort letter and senior management has also given us a letter that there have been no material changes."

Then the Ombudsman talks about the fact that staff had reservations and that the review lasted approximately one year because of the reservations they had.

On page 74, one of the reasons for the great detail of the review is indicated by the prospectus accountant and the prospectus solicitor, but particularly the accountant, and this is important.

Argosy was a securities issuer and had a licence from the commission to be a securities issuer, which meant, in fact, it could issue its own securities without going through an underwriter and having the independent review of an underwriter and the underwriter's counsel.

The prospectus accountant says, "In fact, in the absence of an underwriter, emphasis was placed on both the legal and accounting firms of the issuer to provide such due diligence." "Due diligence" is a term that we use for the detailed review that is done by the lawyers for the issuer and the lawyers for the underwriter to make sure there is in fact, as we say, full, true and plain disclosure.

"Both the lawyers and accountants for Argosy were aware that OSC staff were relying on their professional ability and that of their firms to form the basis of whether or not the issue was accepted and that even though both firms gave assurances with respect to the viability of Argosy, I was still unsatisfied, and continued to seek further information and assurances.

"The most important aspect of why I signed off the prospectus goes directly to my reliance on [Argosy's auditors]." I repeat, as you already know, that Argosy's auditors were one of the so-called "big-A" firms; that is, one of the most respected national accounting firms, Thorne Riddell and Company.

Finally, I turn to page 77 through page 79. Now why does the Ombudsman take issue with an extraordinarily detailed review and reliance on the banks, on the auditors and on the law firm?

The Ombudsman is in effect saying that the commission should have invoked its power under section 60 to have refused the filing altogether on the basis that it was not in the public interest. A shorthand way of saying that is that this investment is such that investors simply will not have any fair chance to realize on their investment.

The Ombudsman says, at page 77, at the bottom: "It appears that a number of relevant factors were not given sufficient weight in making this determination." With all respect to the Ombudsman, that is 20-20 hindsight, after the balloon has gone up in this thing. We have had a year-long review. Who knows what weight somebody else might have given to these factors at that time, but it is beyond question that the commission was careful in considering these matters. At the end, perhaps albeit reluctantly, the auditor (inaudible) on the matter.

The Ombudsman says, on page 79, "Our review indicates that the responses provided by Argosy's solicitors to the various questions raised by the commission's staff regarding policy no. 3-25 were not satisfactory." That is about what the policy required.

Well, that is the Ombudsman's position seven years later, but it was the OSC staff who were dealing head-to-head with Argosy's solicitors, and they were satisfied at the time. The Ombudsman does not say that it was unreasonable to rely; the Ombudsman simply says after the fact that, in his view, the solicitors' replies to the questions were not satisfactory.

I do not know what one can say about that. It is a different view of the matter, but does that constitute regulatory failure? Is that unreasonableness on the part of the staff of the securities commission? With all respect to the Ombudsman, I suggest that it is not. If that is the standard that has to be met by someone looking after the fact and saying that he would have asked more questions or he might not have passed it, then the Ombudsman is turning the ministry and, through the ministry, the taxpayers of this province into an insurance agency with respect to financial failure.

As I say, there may be every good reason that an ex gratia payment ought to be made to small investors who have suffered an unfortunate personal loss and setback, but that is not the issue I am asked to address, nor do I say it is the issue that the Ombudsman is required to address, given the statutory standard of unreasonableness in the Ombudsman Act.

I am imposing on your time. I will turn back to the RRSPs which I think goes back to page 60.

Now if one comes to the RRSP fund--and the money from that fund, as we know, was placed into the syndicated mortgages, the Montreal Trust Company was the trustee. The solicitor took a look at it and here we do have a legal opinion and the solicitor is in fact saying, "We should have registration and a full prospectus on this RRSP."

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Again, the staff is not overlooking anything or being unreasonable or being negligent. They do take a look, they do have an opinion and they say:

"We want registration. We want a full prospectus," although he does say that there should be an interim, what he referred to as a section 59 ruling which means in effect an interim exemption subject to conditions until such time as they do register and do file.

The matter came before the commission. The commission, for reasons that we do not know, but for reasons sufficient to itself gave registration to the RRSP subject to certain terms and conditions. It was conditional registration, but not the conditions that the staff member recommended. The conditions that the commission imposed were more lenient.

The staff is hardly answerable for that. Staff was doing its job and I do not say that the commission was necessarily wrong. The commission disagreed with its staff. That is why you have an independent commission, and it set out the conditions that are set out there on page 62.

One of the conditions was "If requested to do so by the commission as a result of a further hearing...Argosy would prepare and file a prospectus for the RRSP and distribute copies...."

There is some criticism here that the solicitor who was working on the RRSP did not know that another solicitor in corporate finance was working on other filings, presumably the debenture filings at the same time. Now that is a breakdown of internal communication and they should have known, but the real question is what difference would it have made?

The answer is, and even seven or eight years after the fact, you can say it would not have made any difference because your solicitor on the RRSP as I have just indicated, seemed to be the toughest of all. He did an opinion and said, "We want registration. We want a full prospectus." What more could that solicitor do? The answer is that nothing more could have been required and the commission ultimately disagreed with that and gave its conditional ruling which was of a more lenient quality than that recommended by its own staff person.

I would like to return, before making a few final comments about what the investors actually knew and what happened here, to the question of the standard, in the face of everything that I have detailed with respect to the care, and I use that term advisedly, the care that staff of the commission took.

I would take you to page 17 of my letter to the Ombudsman. It is tab 19 in your material. I am reading now from page 17 and this is my conclusion with respect to the questions that are really before this committee.

"It is respectfully suggested that it is not possible on the uncontradicted evidence that was before your investigators and was before Stransman with respect to the extent of the review on the series II debentures to say that such review was 'unreasonable' or that there was regulatory failure with respect to such review." One might not have agreed with some of the conclusions, but that is a very different thing.

"The filing was subjected to an exhaustingly thorough review. The reasonable opinion of someone reviewing the file some seven years after the fact that they would have asked for further information, or might have considered turning the filing down altogether, cannot be taken as evidence that the review that was undertaken, or the decision to finally pass the prospectus, was unreasonable in the circumstances." That is the critical point.

Seven years after the fact, after he knew there was financial failure and fraud, somebody else said, "I would have turned that down." That is a very difficult standard to work around, as to whether it ought to have been turned down under section 60. I go into that on the bottom of page 17 and the top of page 18, and I make the same point in the first full paragraph on page 19.

"The staff did all that it reasonably could to ensure full, true and plain disclosure. Moreover, it did not have evidence before it that would have allowed it to exercise its section 60 jurisdiction and refuse the filing altogether." In my view, staff would have been reversed by the securities commission, as they were in other situations not relating to section 60, if they had invoked the section 60 jurisdiction.

I would like to conclude on the standard with what I say on page 20 and how I began my letter and how I began my remarks this morning with respect to the question.

"As I have tried to indicate, there are larger questions involved for the Ombudsman's office, and ultimately for the government, in your report on this matter. The broader issue is the standard that your office is to apply to the conduct of the staff of regulatory agencies and of ministries"--whether it is the OSC, the Ministry of Consumer and Commercial Relations, the Ministry of Financial Institutions or any other. "If the standard is to be one of being right, or of doing what a third party thinks ought to have been done given the benefit of hindsight, and knowing that there has been failure that has cost investors dearly, then the position of a regulatory agency becomes untenable."

"As I noted in my letter of February 7, OSC staff makes critical decisions every day with respect to adequacy of disclosure, accounting standards, policy compliance and whether what is sold is a security. An informed third party might reasonably make a different decision in many of these cases. Should liability therefore follow? If the answer is yes, then the position of the OSC as the regulator of a multibillion-dollar industry becomes impossible. That is the nature of the broader question that I respectfully suggest must be answered in this case before a decision is made that an indemnity ought to be paid."

I commend that to you, ladies and gentlemen, as the issue I think has to be answered. I say to you in all candour that on the essential questions with respect to the syndicated mortgages, that is, whether the decision was wrong that it was a security--and I cannot conceive that is an arguable point at all--whether there was adequate investigation or whether there was a reasonable review on the debentures and the RRSPs, the evidence is simply to the contrary. After the fact, reasonable third parties may have come to a different conclusion, but that is not to say the quality of the review was unreasonable at the time.

I would like to conclude with the fact that it has been said that there has been payment made in cases like Northland Bank and Canadian Commercial Bank and some of the other trust company failures. I think we should be very clear as to who gets paid in these cases. Depositors get paid--they are insured by the Canada Deposit Insurance Corp. or the government picks up the tab over CDIC, as it has in Northland and in CCB--but investors do not get paid a cent.

The CCB investors, that is, those who hold the common shares in CCB and Northland, those who hold the common shares in Crown Trust and the Greymac/Seaway thing that is still going through the courts here--and I

believe the Ombudsman has that too--the Crown Trust preferred shareholders, the shareholders in the Bank of British Columbia and the shareholders in the other trust companies do not get one cent. They are the investors and they are left holding the bag as investors. They are not depositors, and these people were not depositors. They were getting 1.5 or 2 per cent over the going market rate.

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Many of them, as we know, were unsophisticated investors to the nth degree. They were attracted by what were probably high-pressure sales tactics, but equally attracted by what appeared to be safe mortgage investments at a very attractive rate, 1.5 to 2 points more than trust company guaranteed investment certificates were paying. As I have said before, it may be that they are entitled to an ex gratia payment, and one can sympathize and understand that decision. However, it is not a matter of regulatory failure and it is important to appreciate that investors in financial institutions do not get bailed out. Depositors get bailed out.

The other point, and it has been raised by you gentlemen, is that regulators never know as much as bankers or auditors. Bankers in some cases get daily or weekly reports; the auditors are in there looking at the books. We do not do that and we do not have the staff to do that. No securities commission in the world does it; no banking commission in the world does it. We must rely on the integrity and quality of work that is done by others, not that we do not have our role and not that we ought not to be tough and ask questions. But how much tougher can you get than a year-long review and 100 deficiencies and making them file two separate prospectuses?

Mr. Berger said today that he, personally, and some other investors called the OSC and were reassured that nothing was wrong. I am not here to contradict Mr. Berger and this is not a forum where witnesses are cross-examined as to what exactly was asked and what was said; however, if there is one rule above all at the OSC, it is that you do not comment on anything that is in before the commission.

We would be out of business, or people would lose their jobs at the commission, in 10 seconds, if we went around telling investors, "Yes, this was okay," and "No, that was not okay." We may not be the smartest people in the world, but we are not fools. No regulatory agency would ever do that. Moreover, we have a rule at the commission that we never comment on whether an investigation is going on, for the very good reason that people can be damned for no reason.

Suppose, for instance, that we do have an investigation of Argosy going on and suppose Argosy is cleared and nothing again is heard, which happens in more investigations than not, you do not tell people there is an investigation of Argosy because that is to damn them. The press picks it up, and there is no coming back from that if you are cleared. You are a financial institution that is being investigated by the OSC. We have an ironclad rule that, unless there is a major public case in which there is good public reason to do so, we never comment on whether there is an investigation going on.

Now I am not about to contradict Mr. Berger and say that he did not talk to somebody at the OSC, but if he was told anything, the most that he was told is that we do not know anything about that company, and that is the kind of assurance he said he got. We do not know anything about that company, we do not have anything, and that is all he wanted to hear. But there were certainly

no assurances given that it is a sound investment. That would never happen at the OSC. Thank you very much.

If you wish to hear about the comfort letter, and you may, then Mr. Cherry or I could take questions now or later.

Mr. Ashe: I would like to hear about the comfort letter.

Mr. Cherry: I am not sure I have the same book of documents as you do. If I confuse you with the references, please straighten me out.

There have been a number of references today to the investigation conducted by OSC staff. You also have before you various documents relating to that work, and I thought it might be worth taking a couple of minutes to put those in context, to explain to you in an overview sense who does what at the commission and why we are doing it. I think it is important to understand that in a regulatory capacity, in fact, our primary focus is to ensure that others have done the things they are supposed to do. Indeed, most of our work is focused that way.

In terms of financial disclosures--and that is the sum total on which I am qualified to speak--our general approach to prospectuses, annual financial statements or interim financial statements is all part of a large scheme of things to ensure a minimum quality and quantity of information in the public domain for people who have their securities publicly traded. It is a very general, broad-brush framework, and I am sure if any of you have had occasion to deal with accountants and auditors, you know it is a pretty fuzzy business.

Our approach is to start with a general requirement that financial information be prepared in accordance with generally accepted accounting principles. Those are not our rules. We support the rules promulgated by the Canadian Institute of Chartered Accountants, and for certain information, particularly in prospectuses, we insist that information be confirmed and verified by independent auditors.

In other instances, such as interim financial statements, we do not insist on that information being audited. That is a practical decision based on the realities of timeliness, more than anything else. Audits take a great deal of time. If we were to insist on all information being audited, it just would not get into the public domain soon enough.

That is our general approach, and it is a building-block approach. Companies put information into the public domain. When a prospectus is filed, we insist that there be an historical perspective brought to bear. That is usually five years' worth of audited financial statements. At that point in time, what we are seeking is reasonable assurance that those financial statements have been competently prepared and have been audited by a reputable firm of auditors.

What we are looking for, in my view, is evidence of a reasoned and informed exercise of professional judgement. Do they seem to be aware of their responsibilities? Do they appear to have done the things that one would expect them to do? Particularly, in the circumstances, have they adjusted those general rules to deal with the specifics of a situation? Clearly, I think there is evidence here to indicate that was the case. There were known problems. There was concern expressed about the collectability of receivables. The issue of the underlying worth of the real estate was well known and looked into.

That is the focus of the commission, to say: "Given the considerable information that comes to light in the process of pulling a prospectus together, has the audit been properly focused? Have the professional advisers taken reasonable reactions to known issues?" Most of our job, in fact, is to make sure that fine-tuning has taken place. If we think an issue has been overlooked, we identify it and refer it back to those people.

We are not in the business of replacing their judgement with our judgement, because on many of these issues--it is quite easy, on a disclosure matter--we can turn to the CICA rules, which say, "You must disclose interest expense on long-term debt." It is very easy to figure out whether that has been done. It is a yes-no situation, but the gut issues are not yes-no issues. They are judgement calls.

It is the collectability of a receivable. It is the worth of a Quintette coal property, if you are in the mining business. In the last few years, financial history is riddled with these tough nuts. Oil and gas has been a problem, with recent declines in prices, and you can get honest differences of opinion. I would say on just about any substantive matter, there is a range of possible outcomes and within that range, any number could be supported and held out to be a reasonable position. That is our starting point.

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What I would like to do briefly is to refer you back to the documents to illustrate how that process was applied in this particular case, and it is in the case of the prospectus on the series II debentures. In this exhibit book at page 113 is the audit report issued by Thorne Riddell on the 1978 financial statements. There are two things to note. Our main concern is to ensure that it is a clean opinion, and Thorne Riddell is expressing an unqualified opinion that, in its view, those financial statements are fairly presented and that it has conducted all the auditing procedures that the professional standards require.

I also draw your attention to the date at the lower left-hand side, February 16, 1979. That date indicates the completion of the fieldwork. You have to bear in mind that the auditors are the ones who have the hands-on exposure to things. They are the ones who can pull out the supporting evidence, go through the company's files. We do not have that access. We do not ask that auditors pull in their working-paper files and submit them for our review. It is not practical, and I am not convinced that it would be appropriate, unless we had reason to believe they had breached their own responsibilities.

So we have a clean opinion that was expressed in February 1979. In that particular prospectus, not only were these financial statements included but also there were unaudited financial statements for the four months ended April 1979. I think the fact that this audit report was being issued in February 1979, barely two months prior to the end of the unaudited interim financial statements, gives a great deal of comfort. If you have to get the time frame in mind, they were literally auditing the 1978 numbers as the April 1979 financials were being finalized.

Mr. McLean: Do you do spot checks to verify their accounting?

Mr. Cherry: No, we do not.

Mr. Ashe: They are professional accountants. They have to sign with their degree at stake, their legal responsibility of that degree.

Mr. Cherry: You are quite right. What we do require is confirmation from the auditors that they are aware their opinion is being used because, again, we usually have five years' worth of history. The opinion was issued back in 1973 or 1974 and things may have changed, so we seek from the auditors written confirmation that they are aware their opinion is being used and that they consent to that use.

That consent is found at page 30. What it says is that in the process of giving their consent--it is not merely a piece of paper--in order to issue that consent, they are required to carry out certain additional procedures. Specifically, it requires them to read the entire prospectus; in other words, to go back and reconsider the appropriateness of their opinions as originally issued, in the light of all the information as is disclosed in the prospectus and also in the light of all information they have within their knowledge, no matter how they got it.

Clearly, the auditors are the ones who have the day-to-day, ongoing contact with the client. As Mr. Beck said, and I agree wholeheartedly, there is just no way we have the level of knowledge they do, the specifics of transactions. The financial statements are a tremendous aggregation of enormous amounts of detail, and they are deceptive. They look amazingly simple and often do not reflect the underlying complexities. Clearly, the auditors are the only ones who are that close to the details of transactions.

Our approach is to insist there be audited information and that it have a clean opinion that the auditors are giving unqualified support to those financial statements. At that point, we have two things: we have the auditors happy and, first and foremost, there is a statutory responsibility for the company. They are the company statements. Sure, this was a case of fraud; it was not declared at the time, obviously, but you always start from the proposition that the financial statements are, first and foremost, the responsibility of the company issuing those statements. The company itself is required to make the representation that those statements are fairly presented.

In addition to that, we require other procedures with respect to the unaudited interim financial statements which, in this case, covered the four months to April 1979. Those procedures we require are at the leading edge of the profession. It is true they are now reflected in the Canadian Institute of Chartered Accountants' rules, but it is at our insistence and I think it is fair to say--I was not involved at the time--the Ontario Securities Commission is the motivating force that has led to having auditors' involvement with the unaudited interim financial statements. That was the case here. What we require, as confirmation that they have carried out those procedures, is what is called the comfort letter. That was the letter that was referred to earlier and I believe, you can find that on page 25.

Pardon me, go first to page 28. Again, this is Thorne Riddell, the company's auditors. The reason we have the auditors do it is because comfort coming from them has a great deal more assurance behind it than someone else who is asked to go in quickly, come at it cold and does not have the historical perspective that comes from being the auditor over a number of years. They are responsible to draw on their entire knowledge base, wherever they got it from, in the process of giving this comfort.

If you turn to page 29, we have a paragraph that says, "We have,

however, made a review but not an audit of the interim consolidated financial statements." Further on in that paragraph it says, "On the basis of those procedures, being the review procedures, nothing has come to our attention which would give us reason to believe..." and they set out several things. The gist of that is that nothing has come to their attention that those financial statements are not fairly presented in accordance with generally accepted accounting principles.

In order to issue that negative assurance, professional standards require that they carry out certain procedures. Those procedures involve comparisons, discussions and seeking explanations. It is essentially an exception-oriented process. You deal with unusual deviations, things that catch your eye as being abnormal or unusual. That is what they did and confirmed to us and that is a clean comfort letter. In other words, we interpret that as saying there were no problems they were aware of that would affect the financial presentation. In the circumstances, staff were not satisfied with that explanation; they sought additional explanations. At that point, I would like to refer you to page 35.

Mr. Ashe: Does that have to do with the reserve?

Mr. Cherry: Exactly.

Staff asked Thorne Riddell to confirm the reasonableness of the bad debt provision. Thorne Riddell pointed out, quite rightly, that it was not engaged to do an audit. At the words "Please confirm," the auditor says "Uh huh, you are asking me to express an audit opinion and I cannot do that." Thorne Riddell gave a proper response which did two things: it pointed out that it had not done an audit, but it also pointed out that it had been aware of the sensitivity of the bad debt problem and that it had adjusted its review procedures to pay particular attention to the allowance for doubtful accounts.

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I believe that is a proper response in the circumstances. In my experience, having done many audits of public corporations, it is commonplace: two reasonable people sitting down and going through any set of accounts receivable or mortgages receivable and trying to arrive at a provision for doubtful accounts. It would be sheer coincidence that two people would come up with approximately the same figure. Again, it is one of those ball-park figures in which there is a range. But Thorne Riddell did provide additional comfort to staff, confirming it had carried out additional procedures and that, as a result of those procedures, it was still happy.

The other interesting thing they raised in their letter--on page 2 of that letter, which is at page 36 of my book--is that they point out the additional procedures they would have performed if they were doing an audit. In other words, these additional procedures are the very procedures they had done on the 1977 audit and on the 1978 audit, as reported in that clean audit report dated February 16, 1979. It included things such as confirming with the mortgage holders the balances of those mortgages, assessing the collateral, the underlying security value. They itemize five different procedures, which to me indicates again that they paid exceptional attention to the collectability of the receivables and, therefore, a reasonable balance for doubtful accounts.

Their letter does two things: it confirms that they did do additional procedures at the time of the audit, so they clearly had a fair bit of

information; on the basis of that audit-level information on the 1978 financial statements, they were able to do some additional review procedures and provide further assurance on the unaudited April 1979 figures.

Taken together, that is our normal approach to things. What I see in the documentation before me is what I would expect to see: that the unusual items were identified and the professional, independent advisers--in this case, the auditors--were asked to provide specifics of the additional procedures they had carried out. Rarely does staff of the Ontario Securities Commission get in the business of carrying out those procedures themselves.

Mr. Ashe: What would be the difference in your procedure leading up to the validity of a comfort letter if Thorne Riddell had not been the auditors of record for any extended period of time? Let us say that 1978 was their first audit.

Mr. Cherry: That is a good question. It is a problem that is recognized in the profession. The responsibility is on an auditor who, if he takes on the risk of giving comfort, takes on the obligation to build up the historical database to allow him to make an informed review. In my experience, what happens is that auditors will review the working papers of the predecessor auditors for two or three years previous to taking over, and usually there are extensive conversations between the outgoing auditor and the incoming auditor. That sort of transitional mechanism is covered through the rules of the profession. But there is a responsibility there, first, for the guy who is taking over to consult with and become informed of the history. There is also an obligation on the outgoing auditor to co-operate, so you cannot get an outgoing auditor, who is a little bit disgruntled, withholding information. That is against the rules of conduct.

Mr. Ashe: That is his professional responsibility.

Mr. Cherry: Yes.

Mr. Kerzner: Mr. Beck, it is a fair summary, is it not, that the hearing held by the commission in February 1978 was for the purpose of determining, in essence, whether Mr. Carnie had rehabilitated himself from his previous conviction? Correct?

Mr. Beck: Yes.

Mr. Kerzner: And that on the evidence presented to the commission, it was satisfied that over the course of the previous seven years he had conducted himself in an exemplary enough fashion that it could safely conclude he had rehabilitated himself.

Mr. Beck: Yes, Mr. Kerzner.

Mr. Kerzner: Do you agree with me that it would have been important for the commission, in evaluating the good evidence that was being presented by Carnie, to have known that for the first two and a half years after his conviction he was either misleading another regulatory authority or failing to carry out that other regulatory authority's wishes. Do you agree that it would have been important for the commission to know that in evaluating the favourable evidence that was before it?

Mr. Beck: Yes, I would agree. That is evidence that should have been properly before the commission.

Mr. Kerzner: Do you agree with me it was also important for the commission to know, in evaluating the evidence it had before it in 1978, that for the roughly 12 to 18 months following December 1973, Argosy and Carnie had acted in breach of an order of a tribunal exercising regulatory jurisdiction under a different provincial statute? Do you agree with that?

Mr. Beck: Yes, I would agree with that, although I am not sure it would have changed their opinion necessarily. You are talking here about some complaints by borrowers primarily, rather than lenders, but they should have--sorry?

Interjection.

Mr. Kerzner: No, I am saying that even for that probationary period, if that is what it was intended to be, the employment by Argosy of Mr. Carnie during the 18 months following December 1973 was a clear breach of that order.

Mr. Beck: I see. Yes, I think that was evidence that ought probably have been before the commission. It certainly would have been much better if it had been.

Mr. Kerzner: I take it also that when the commission hears an appeal from the director, it does not agree blindly with the director's position.

Mr. Beck: No.

Mr. Kerzner: I take it that when it does hear such an appeal, it gives some weight and some credence to the director's experience and his views, as expressed in his decision.

Mr. Beck: Yes, certainly.

Mr. Kerzner: Would you agree with me that had the commission had before it in 1978, in addition to the director's expressed views, the evidence that for at least half or more of that seven years of rehabilitation Carnie had been acting in the fashion I have outlined, we probably would have seen a different result?

Mr. Beck: I think I could--

Mr. Kerzner: I used the word "probably," not "certainly."

Mr. Beck: Yes, I certainly agree with you that there should have been that communication and that the evidence should have been before the commission. Whether they probably would have arrived at a different conclusion, I do not know. That is difficult. I certainly go along with you right up to the edge, as it were.

Mr. Kerzner: Now there was another problem in connection with that application, was there not? That was the fact that the director, when he heard the matter, felt that Carnie, in swearing the affidavit that you do on the application, had failed to disclose two charges that did not proceed to conviction, because your application form at the time required disclosure of not only convictions but things you were charged with.

Mr. Beck: Right.

Mr. Kerzner: He omitted a conspiracy charge in 1969 and an obstruction of justice charge in 1974.

Mr. Beck: Right.

Mr. Kerzner: The director expressed the view, having heard the evidence, that he was satisfied as to Carnie's explanation for why that was omitted and he was satisfied on Carnie's explanation that it was not a deliberate attempt to mislead.

Mr. Beck: Yes.

Mr. Kerzner: The commission reviewed that matter and came to the same conclusion.

Mr. Beck: Right.

Mr. Kerzner: Would you agree with me that the credibility of those explanations would have been seriously impaired had either the director or the commission, or both, known that this same person had both misled a regulatory authority in the past and had failed to honour, and that Argosy had failed to honour, the tribunal's order of 1973? Do you agree it would have made those explanations for those omissions a lot less credible?

Mr. Beck: Yes, I think I would say in general, again, if the evidence of the difficulties and breaches that Carnie was involved in with the registrar had been before the commission, it might well have cast a different light on Carnie in total, as it were, and certainly on explanations he was giving.

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Mr. Kerzner: If we add this to the piece, the failure to disclose the two charges, to the other matters I put to you earlier, would you now be prepared to think that there would probably have been a different result on that commission appeal in February 1978 if all three things had been in front of the commission?

Mr. Beck: I do not know about "probably." If you read the commission decision, it was concerned about any misuse of funds or improperly dealing with funds. That seemed to be a matter that concerned the commission a great deal.

It is difficult to know what they would have done. It might have influenced them and it might have resulted in a different decision. But the use of funds thing loomed large in the commission's decision at that time, so "probably"--that is difficult. I do not know.

Mr. Kerzner: The commission expresses itself on page 3 of its reasons in one sentence, as follows: "Mr. Carnie has at all times been its manager." That is speaking of Argosy. "There is no indication of any impropriety in his handling of its affairs, notwithstanding the fact that he had the management of substantially greater funds than those which were the subject of the 1969 charge."

You say the commission only then considered the question of the handling of funds, rather than his propriety or impropriety in the general handling of Argosy's affairs?

Mr. Beck: No, I would not say that. I was just saying what it seemed to me the commission was concentrating on. It might well have been

significantly influenced by those other facts. One cannot deny for a moment that those facts ought to have been placed before a commission.

Mr. Kerzner: You told us this morning why "mortgage" is a defined item of security under the act. A mortgage sold by a registered mortgage broker is a listed exemption, correct?

Mr. Beck: Right.

Mr. Kerzner: Is the reason for that that it is being sold by somebody who is being regulated by a different regulatory arm, and so the securities commission is satisfied that somebody, at least, is looking after the public interest in those circumstances?

Mr. Beck: Yes. A mortgage and interest in property is not your traditional security, and it is being looked after by somebody else; that is right.

Mr. Kerzner: As I understand the definition of the exemption, it is not just that it is a traditional mortgage.

Mr. Beck: That is right; you are registered with the mortgage.

Mr. Kerzner: It is a mortgage sold by a registered mortgage broker.

Mr. Beck: Absolutely right.

Mr. Kerzner: Would it be fair to say that if the mortgage broker were not being regulated by some other regulatory body, that exemption for the sale of mortgages probably would not be there?

Mr. Beck: That is right.

Mr. Kerzner: In making your submissions on the recommendations of the Ombudsman on the inadequacy of the investigation with respect to the 1975 decision on security, you listed what they had and you made the comment that you do not know what else they could have gotten and looked at anyway, so what is the Ombudsman complaining about?

Would it have made any difference to the decision in 1975 if the commission or the director had known that Argosy's funds were being pooled in a common bank account and that when somebody invested his money in a \$5,000 piece of whatever mortgage, regardless of the mortgage, it all went into one pooled bank account and Argosy made all its disbursements from that one pooled bank account, regardless of what was being advanced to a particular mortgagor at any particular time?

Mr. Beck: I do not think so. I do not think that way of Argosy handling its funds would have been a particularly important factor.

Mr. Kerzner: I thought you told Mr. Philip that pooling, while not determinative of the issue of investment contract or no investment contract, is one of the indicia.

Mr. Beck: Yes, and by pooling I mean you, as an investor, do not have an interest in a specific mortgage. It is all thrown together in mortgages. All the interest comes in and money flows out; 6.5 to me and 8.5 to you, or whatever you buy at. That is what I have always regarded as pooling.

Whereas, in what was being sold here, they had individual investors' interests in specific mortgages the money from which flowed to them.

When the money came in, it is intelligible to me that it would be pooled in a single bank account by Argosy. That is what I meant by pooling as opposed to interest in a specific mortgage.

Mr. Kerzner: We have had some suggestion in the information presented to the commission that there was a certain shifting around with investments, that is to say, if I, as an investor, thought I was getting a certain piece of a mortgage in property A, I sometimes ended up with a piece in mortgage B. Would that have made a difference if Argosy gave the investor an interest in something different than he thought he would get?

Mr. Beck: Yes, again I think that is a factor.

Mr. Kerzner: That is more of an investment contract.

Mr. Beck: Yes. That is something you would want to know.

Mr. Kerzner: Third, would it make any difference to the decision if you knew what it was that the salesman, or whoever it was who was talking to the investors, what they were representing to individual investors as to what was being done, quite apart from what was written down on the paper being issued by Argosy?

Mr. Beck: I guess if you could actually listen in, or have a tape of the sales pitch, that might be important. We did have the solicitation letter. We did have copies of ads and the trust indenture, but I do not think anybody heard the individual sales pitches as such.

Mr. Kerzner: You told us that the investigator talked to the author of the letter; that is, somebody at Argosy. In looking at the investigator's report in your file which Mr. Bellmore kindly made available earlier, I do not see that anybody talked to a particular investor, or any particular investor, even though there is a list in the files of all of the investors, apparently, for example on the Manzini Investments mortgages receivable list, it is item 3 in your files.

Mr. Ashe: Is that Remo Mancini?

Mr. Kerzner: No, it is Manzini, sorry. It is probably pronounced Mancini.

Mr. Beck: There is no evidence that they talked to him. There were no complaints from investors. It is not unusual that they would not talk to investors as such.

Mr. Kerzner: If the representations being made to investors is a factor that can influence the decision for or against investment contracts, is there any particular reason why the investigator would not find out what he reasonably could do about that aspect of it?

Mr. Beck: No, what you usually do is have a complaint from an investor; you talk to them and you know, which was not the case here.

Mr. Kerzner: Your people were taking their own initiative in spotting something that looked like they ought to look at it. If they had done that, what prevented them from--

Mr. Beck: Nothing prevents them, but I am not sure it would have changed the decision at all. All you would have told them is to stop doing that; stop making that kind of a pitch; we do not like it. We do that. I am not sure it would have changed the legal character of what is being sold.

Mr. Kerzner: Can you now turn, and it may be that we should ask Mr. Salter to deal with this because he was the fellow who was on the spot in 1975, to looking at Mr. Stransman's report where he deals with this particular question.

Mr. Bellmore: Do you have the reference, please, Mr. Kerzner?

Mr. Kerzner: Yes, I can get it for you in two seconds. It is volume 1 at page 88. That is the briefing book page number. It is tab 16-B

Mr. Beck: Is that beginning in 1975?

Mr. Kerzner: It is application of law to the facts. At the bottom of the page he concludes, "Given the state of flux of the law at the time..."

Mr. Beck: Okay, we have it.

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Mr. Kerzner: It is page 88 in the briefing book; the page is 83 in the Stransman numbering.

He concludes at the bottom: "Given the state of flux of the law at that time, the OSC decision was reasonable in the circumstances."

At the top of the page, he makes reference to, "In 1975, the following factors were indicators of the existence of an investment contract," and he lists three factors.

Is that what is described in the Ombudsman's report as the Ontario Securities Commission's "rule-of-thumb" test?

Mr. Beck: Mr. Stransman is giving his own opinion here, throughout the piece. He reaches his opinion, but he is also looking at the reasonableness of what the OSC does. He is saying that these were factors that would have tended towards an investment contract.

Mr. Kerzner: In 50 or 100 words or less, can you tell us what the "rule-of-thumb" test is that the commission was using? In its report, the Ombudsman talks about a rule-of-thumb test.

Mr. Salter: I believe that may have been my phrase. My best recollection was: first, did the investor make the decision between this mortgage or that mortgage, this multiple-unit residential building or that MURB?; second, was the interest identifiable, could you get in your car and drive up to North York and took a look at the property?; third, was there or was there not a guarantee of the mortgage payments, was there or was there not a so-called "rent-up agreement" guaranteeing a certain level of rentals in the MURB property?

I hope I am not exceeding 50 words, but that was the staff rule of thumb.

Mr. Kerzner: What was the test, though, that you and the two staff

lawyers applied in 1975 in coming to the conclusion, as we have been told, that these syndicated mortgages were not an investment contract?

Was it the Howey test, was it the Hawaii test, was it the test as expressed in the Divisional Court in Pacific Coin? What was the test that was used?

Mr. Salter: It would have been an amalgam of all of those, certainly.

Mr. Kerzner: I understand what Mr. Beck says about what two lawyers say now about having no present recollection of the advice they gave on a matter that was one of 50 or 100, or whatever, they were asked to deal with that year.

Can you tell us, how is it that you are able to recollect, with any more clarity than they do, as to what was discussed and decided on what must have been for you an equally routine one of 50, 100, or 250 such things that you had to pass on 10 years ago?

Mr. Salter: Indeed I can. There is nothing like a hearing before the standing committee on the Ombudsman to sharpen marvellously one's recall.

Mr. Kerzner: That really does not come, though, until some 10 years later. Are you suggesting that if we get Mr. Gord and Mr. Bader here that they are suddenly going to have sharpened recall that they did not have a few weeks ago when Mr. Beck asked them the very same question?

Mr. Salter: I cannot speak for them, obviously. For myself, when one's personal decisions, when the decisions of the staff of which one is responsible are put in issue, one thinks very, very carefully, and I have done so. The recollections I have given you are my genuine and best recollections of what happened and what was said at the time.

Mr. Kerzner: Your handwritten note on the investigator's report--your note looks like it is dated August 29, 1975--indicates that you have reviewed the report with Mr. Bader and Mr. Gord.

Then it has this: "In my view"--that is your view--"these mortgage participations are not securities." There is no recording in that note of what their views were.

Before I ask you the question, let me read you, as well, the way in which-- Is A. A. C. the investigator, is that W. A. Carson, the initials A. A. C.?

Mr. Salter: Yes.

Mr. Kerzner: He says this on September 4, talking about Argosy, "This situation has been discussed amongst the director, Mr. Salter, Mr. Bader, Mr. Gord and myself." Then he says this, "The consensus of opinion is that there is not a matter for the commission."

Was there any difference of opinion between any of those participants? It may have been your view that this was not a security, but did any of the other people have doubts, some different views? There may have been some sort of consensus, but there is no note that, "Everyone was of the view that they were not securities."

Mr. Salter: Perhaps if you review the file, I think you will see Mr. Carson in his memo expressed his view in the memorandum, which we do not have at the moment because you have the file. In my recollection, he expressed his view on whether it was a security, did he not?

Mr. Kerzner: I am more interested, though, in the two lawyers because no one seems to record what they thought they said, and certainly there is no recording in writing of what view they did hold.

Mr. Salter: I cannot recall anything around that word "consensus." Re-reading Mr. Carson's note today--and Mr. Carson was an experienced police officer, 25-year career in the Royal Canadian Mounted Police before joining the commission as an experienced investigator--suggests to me that Mr. Carson perhaps was not persuaded, but I have no recollection from the time of whether there was dissent expressed by him. I simply cannot help you there.

Mr. Kerzner: I was more interested, though, in the two lawyers. I will tell you what Carson said in just a minute.

Mr. Salter: I have no recollection of any difference of opinion among those two lawyers.

Mr. Kerzner: Carson expressed the view--and I appreciate he is an investigator, not a lawyer--that Argosy and the law firm he mentions "may be considered to be trading in securities in relation to the short-term or interim money received from the public." Can I ask the clerk to take this around to you.

Are you saying you do not remember if there was a dissenting view or you do not remember that there were any dissenting views?

Mr. Salter: I do not remember a dissenting view.

Mr. Kerzner: All right. In the upper right-hand corner of the September 4 memorandum, there is a note in pencil that says "discuss" and either the name "Vern" or the name "Vim." Can you find that note?

Mr. Salter: I do.

Mr. Kerzner: Do you know what that is?

Mr. Salter: It is "Jim."

Mr. Kerzner: What is it a reference to?

Mr. Salter: A reference to--

Mr. Kerzner: Do you know who Jim is?

Mr. Salter: Yes. It is J. M. DaCosta, who was then in charge of the enforcement branch. He was deputy director of enforcement with the commission.

Mr. Kerzner: All right.

Let me go back to Mr. Beck. If I read Stransman's report correctly, he concludes today that these syndicated mortgages were securities. Do I read him correctly?

Mr. Beck: Yes.

Mr. Kerzner: What does he know that the commission did not know back in 1975? What has he got that the commission did not have then?

Mr. Beck: I suppose he has--

Mr. Ashe: Hindsight.

Mr. Beck: For sure he has hindsight.

It is a developing area of the law, I think. C and M Financial Consultants was decided in 1979 in the courts just about close to the time that Argosy's life came to a useful end, in the 1979-80 period where the court said that was a mortgage, Greymac was decided and the commission went the other way. In fairness, Mr. Stransman disagrees with the commission on Greymac also, and I read his report that way. I would have to take a look again.

I think he is taking a rather broader view than the director took in Argosy and the commission itself took in Greymac in 1980. He is taking a broader view. I think he was influenced by the sales practices of it, by the shifting of the mortgages which you talk about, and by the small amounts that were put in, relying almost totally on the expertise of the Argosy people. I think he would aggregate all those factors plus other ones to which he refers, and the fact that, at least in the United States, a guarantee was not required for it to be an investment contract.

As I indicated this morning and as the commission itself said in Greymac in 1980, the commission has always been influenced by guarantee of return, as there was in Western Ontario Credit, as against no guarantee of return. That has been an important dividing line, and I think Mr. Stransman is saying that there has been too much emphasis put on that, particularly from today's perspective and where the law is.

Mr. Kerzner: I would like just to deal briefly with those last three factors. The question of the importance Mr. Stransman put on the almost total reliance by the investors on Argosy's expertise; was that not something, though, that was essentially highlighted at least in the Divisional Court and in the Court of Appeal decision in the Pacific Coast Coin Exchange case?

Mr. Beck: Yes.

Mr. Kerzner: Those were issued and released prior to the review by the director and his legal people at the end of August 1975?

Mr. Beck: Right. To repeat, I emphasize that Greymac is a 1980 decision of the commission after the Divisional Court decision in C and M Financial Consultants in 1979 found that it was a mortgage. The thing that differentiates the decision of the director in Argosy taken together with the commission's decision in Greymac in 1980, from what the commission itself did in Western Ontario Credit at almost the same time as Argosy and what it did in Fidelity is the interest in a specific mortgage and a guarantee. Those were the two critical factors. That was the dividing line between Western Ontario Credit on the one hand and Argosy and Greymac on the other hand. Those were the two critical factors.

Mr. Kerzner: Thank you, Mr. Beck. Those are the questions I had.

Mr. Chairman: Are there any questions from the committee members?
Counsel?

Mr. Kerzner: I think that is it for the Ontario Securities Commission. Normally, the Ombudsman would get a chance to wrap up. I do not know whether the Ombudsman wants tonight to put it together and make it even shorter or what the committee's wishes are. I should tell the Ombudsman's staff that they are not obliged to fill all day tomorrow with their wrapup and response because we may get a chance to get an early start on some deliberations quite unexpectedly and desirably some time tomorrow, but I do not know whether the Ombudsman wants to put something together.

Dr. Anisman: I think, if the committee agrees, that we would appreciate some time to review the evidence that was given to you today and yesterday and to give you a concise response to it tomorrow morning.

Mr. Chairman: The committee will adjourn. It will meet again tomorrow morning at 10 o'clock.

The committee adjourned at 3:44 p.m.

STANDING COMMITTEE ON THE OMBUDSMAN
ARGOSY FINANCIAL GROUP OF CANADA LTD.

THURSDAY, APRIL 16, 1987

Morning Sitting

STANDING COMMITTEE ON THE OMBUDSMAN

CHAIRMAN: McNeil, R. K. (Elgin PC)

VICE-CHAIRMAN: Sheppard, H. N. (Northumberland PC)

Bossy, M. L. (Chatham-Kent L)

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Mancini, R. (Essex South L)

McLean, A. K. (Simcoe East PC)

Morin, G. E., (Carleton East L)

Newman, B. (Windsor-Walkerville L)

Philip, E. T. (Etobicoke NDP)

Shymko, Y. R. (High Park-Swansea PC)

Substitutions:

Ashe, G. L. (Durham West PC) for Mr. Sheppard

Offer, S. (Mississauga North L) for Mr. Morin

Clerk: Decker, T.

Staff:

Kerzner, T., Legal Counsel; with Perry, Farley and Onyschuk

Evans, C. A., Research Officer, Legislative Research Service

Witnesses:

From the Ministry of Consumer and Commercial Relations:

Bellmore, B. P., Legal Counsel; with Lockwood, Bellmore and Moore

From the Ministry of Financial Institutions:

Moore, D. C., Legal Counsel; with Lockwood, Bellmore and Moore

From the Office of the Ombudsman:

Morrison, G., Director, Investigations

Anisman, Dr. P., Legal Counsel; with Goodman and Carr

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON THE OMBUDSMAN

Thursday, April 16, 1987

The committee met at 10:11 a.m. in room 151.

ARGOSY FINANCIAL GROUP OF CANADA LTD.
(continued)

Mr. Chairman: Ladies and gentlemen, I now see a quorum. We have representatives from the three parties. We will begin our hearings. First, I will call upon our counsel.

Mr. Kerzner: Before we start with the Ombudsman's response--

Mr. Chairman: Just a minute; I forgot something. We did not get permission to meet next week and we did not get permission to meet the Monday before the Legislature sits on April 27.

Mr. Hennessy: So much for open government.

Mr. Chairman: This will be the last day we will be meeting before the Legislature goes into session.

Mr. Kerzner: Before we deal with the Ombudsman's response, Mr. Bellmore had undertaken, at the opening of the ministry's presentation, to take the standing committee on the Ombudsman through the two, four, six or eight documents in the two blue binders that the ministry felt were the significant items. He thinks he needs 15 or 20 minutes to accomplish that for us. Can we ask him to do that before we start in with the Ombudsman?

Mr. Bellmore: Yesterday, you heard Mr. Beck indicate to you the reliance that the regulators place, and necessarily place, on banks, auditors and other professionals in fulfilling the regulatory function. In this case, I would like to take you to some of the documents that are in the materials before you, indicating what the banks and the auditors were saying, not only to the Ontario Securities Commission but also to the investors in Argosy, and note that no one has held those individuals accountable to this point.

I refer you first to the thinner of the two volumes--blue book--page 360. The first document at page 360 is a letter from the manager of the Royal Bank of Canada to the Ontario Securities Commission in June 1977 regarding a deficiency letter that was sent by the commission in respect of certain concerns it had about the company and its financial status.

The bank writes: "We have been requested by the above valued client to confirm by letter the line of credit in the amount of \$2.5 million has not been called and that in fact upon completion of the public funding we are expanding our support to \$5 million. While our bank line contains a demand feature, we have the utmost confidence in the corporation and its officers and are of the opinion"--I emphasize the word "opinion"--"that with the expanded funding, the corporation's profit picture should improve significantly."

Then I would like to turn to page 366. On that page, that letter is dated January 1978. You will recall the evidence of Mr. Baskerville, who

assisted the Ontario Provincial Police in the fraud investigation, was to the effect that the fraudulent acts, the window dressings and the like, commenced in the year 1978. This is a letter from Mr. Carnie to the bank manager.

"Dear Ken:

"Please accept this letter as your authority to release any information regarding Argosy...to the above-noted firm. In their investigation of the feasibility of referring business to us on a regular basis, we wish them to be fully satisfied as to the financial position and business practices of our company."

Then the next page, 367, Mr. Jensen of the bank writes to Mr. Ferguson of that firm, Ferguson, Ormsby and Holland--I believe it is a law firm:

"Further to our telephone conversation, we wish to advise the following facts:

"1. The principals of Argosy are extremely sophisticated in the handling of mortgage portfolios."

Mr. Philip: That was certainly true, was it not?

Mr. Bellmore: "2. All customers of Argosy obtain independent legal advice.

"3. All mortgage documents are completed by independent solicitors with their usual reporting letter on good and marketable title. This is protected by independent liability coverage up to \$1 million.

"4. The mortgage portfolios are participatory mortgages and are all firsts. Argosy investments take a postponed position of up to 20 per cent.

"5. The documentation used by Argosy has been reviewed by the solicitors of all major banks, are accepted as being totally responsible, well-drafted and suitable as security for borrowings by the corporation and/or their investors.

"6. The firm is properly administered by extremely competent staff.

"7. The firm is a member of the Ontario Mortgage Brokers Board and one of their officers is on the board of directors of this corporation, heading the legal department."

Then we have a letter, at page 368, from Mr. Ormsby. They are a chartered accounting firm. You will see it on page 368.

In response to that rather glowing reference, Mr. Ormsby encloses a couple of cheques, \$40,000 on January 27, 1978, and \$43,000 on January 31. "These cheques are for transfers to the Argosy bank account on account of the 'Prolan' first mortgage, and the cheque...is to replace an interbank transfer of January 27."

Next, I would like to turn to page 374, a letter from Mr. Pace to the bank. This is February 1979 now, one year later. This is well after the fraudulent activities, according to Mr. Baskerville, had been going on in

Argosy. You will recall Mr. Beck's testimony yesterday of the bank having daily tracking of these sorts of accounts.

"Dear Mr. Jensen:

"Your name was given to me as a bank reference to my inquiries regarding, 'Argosy Group of Canada,' copies of which are enclosed.

"I am a customer of your affiliate, the Montreal Trust Co. in Ottawa.

"I would appreciate your views on the officers and worth of this company, and its stability. I understand it has been in operation for 11 years and according to Dunn and Bradstreet, employs 11 people. The principal officers seem to be...." It names Mr. Carnie, Mr. Gillespie and Mr. Valteau.

Page 373, if I could go back a page: This is the response from the bank manager to Mr. Pace's inquiry.

"Dear Mr. Pace:

"With reference to your letter of February 9, the Argosy Group of Canada give the branch an open authority to provide financial information as requested by investors without contravening the declaration of secrecy. The Argosy Group of Canada, the principal account being Argosy Finance Co. Ltd. and Argosy Investments Ltd. enjoy a large line of credit with us identified in their annual statement and in their prospectus which is operated to the entire satisfaction of our office."

Bear in mind the evidence of Mr. Baskerville as to the cash flow deficiencies that were showing up in this company in 1978 and into 1979. This is February 1979; Mr. Jensen of the bank is writing.

"The principals being Mr. J. David Carnie, Mr. Gillespie and Mr. Valteau are all extremely knowledgeable in the mortgage area and are individuals of honour who would not knowingly commit themselves or their corporation to participate in a venture that could conceivably cause clients problems. At the same time we should identify the mortgage field does encompass the normal risk, however, we are of the opinion these individuals provide proper management through their expertise in the field."

On to page 375; another letter. This one is further into 1979 now. This is May 1979.

"Your correspondence of May 4 has reached my desk, we are pleased to advise that the Royal Bank of Canada has every confidence in the principals of Argosy Group of Canada and their associated corporations. The principals are highly skilled in their professional field and would not in our estimation knowingly commit themselves to a commitment beyond their ability to service or to manage.

"The corporation enjoy a line of credit to the mid-seven figures.

"We should indicate that no matter what type of investment you participate in, they carry the normal risk, however, these are countered by the professional approach the individual officers grant to the administration and control of the investment portfolio."

That letter is May 1979, to an investor in this company.

On page 376 is another letter, August 1979. This one is from another gentleman at the bank--he was not Mr. Jensen; this man was the personal loans officer--to Mr. Braithwaite.

"Further to your inquiry of August 8, 1979, we wish to advise you that Argosy Finance Co. Ltd. has been a valued client of the Royal Bank of Canada for approximately five years, and is considered a very responsible and reputable company."

On the next page, 377, is a letter to Mr. Ziemba.

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Mr. Mancini: We remember him.

Mr. Bellmore: You may. I am not familiar.

It is July 5, 1980. I take you to the second paragraph of that letter for the purposes I am referring you to it. This is an investor who is complaining that he has lost in Argosy.

"On the basis of the Royal Bank letter I invested \$10,000 in Prolan Syndicated Mortgage at Newmarket and my wife invested \$10,000 in series II debentures."

Here is a gentleman and his wife who have put up \$20,000. Who did he rely on? The bank.

Page 379, if I could for a moment: This are just a sampling of the letters the bank was sending to investors or people proposing to invest in Argosy. These are in writing. Can you imagine? One only has to imagine, if he is putting this in writing, what are they telling investors on the phone.

August 2, 1979, a letter from Mr. Mackey to the bank manager, on page 379. In the first paragraph, he says he has been in contact with Argosy and "they gave me your name as their banker."

"I am interested in investing in their Interim Syndicate mortgages, but I have never heard of this company, any information you can give me would be appreciated, such as how long has the Royal Bank been handling their account, how good is their credit rating, are they a small, medium or large company and any other facts you can give me about this company."

We will go back one page to 378 and we will see what the response was to Mr. Mackey's letter from the bank.

"With reference to your letter of August 2, 1979, concerning Argosy Finance Co. Ltd. and Argosy Investments Ltd. we are pleased to advise that we are the principal bank for this corporation. The corporation has been in existence for approximately 10 years during which time they have grown from a small company to a corporation in the area of between medium and large." This is in August 1979. "The principals have an above average knowledge of the mortgage field and would not knowingly risk themselves, their corporation, or their investors in any portion of their portfolio. The only downside apart from the normal risks, conventional first mortgages would be the possible delay in completion of a project which you may be participating in, and a

delay in the ability to withdraw from the mortgage. It is understood you would receive interest during any delay period at the normal rate. If we can be of any further assistance, please do not hesitate to ask."

I would next like to take you to page 179 of the first volume of documents.

You will recall that Mr. Jensen was the manager of the Yonge and Sherwood branch in Toronto. We have a letter of June 22, 1979, from head office, Royal Bank Plaza, from Jim Gorman who is identified as the assistant general manager, corporate marketing and development. It is addressed to Mr. Carnie.

"Dear Dave:

"This is to confirm our telephone conversation earlier this week and advise you will be hearing from Ralph Fisher and/or Ben Hayeens, management consultants with the firm of Laventhol and Horwath, within the next few days concerning the matter discussed. They have been asked to complete a comprehensive review of the Mortgage Investment Portfolio, which has been assigned to the Royal Bank as security for your operating line of credit. To avoid any misunderstanding they will provide you with what they consider their terms of reference, as well as some indication of the costs involved, which are for your account."

Laventhol and Horwath were the agents appointed by the bank. It is a very large accounting firm. It was appointed by the bank to go in and look at Argosy because the bank, obviously, is getting a little concerned in June 1979 about Argosy and its ability to repay its debt.

Next I would like to go back to the previous volume, page 468. Perhaps I can start at page 466, just so that you have the identity of the document at page 468. If you look at page 466 of that document book, the thinner of the two blue-covered volumes, it is a letter from Mr. Gorman, the assistant general manager of the Royal Bank, dated April 16, 1980. This is after the company is in receivership. He encloses a complete report covering the situation on the Argosy matter. The enclosures are at the following pages, and it is a report that was prepared for the bank.

Look at page 468 of that document book, about the middle of the page, under the heading "Background"; it is about seven or eight lines into that.

"Frequent requests for additional credit to expand operations further in the fall of 1978 and early 1979 were rejected." That is by the bank. "During this period they acquired London Loan Ltd. financed through the Canadian Commercial Industrial Bank and their own resources. Because of our developing concerns in May 1979 we had Laventhol and Horwath examine the mortgage portfolio in detail with a comprehensive report to be provided in due course. Their report dated August 30, 1979, indicated that first mortgages in place or commitments of same in almost every case were not sufficient to retire Argosy's bridging loans secured by second and third charges and while Laventhol and Horwath did not consider loans at risk, payout could be protracted unduly. It also flagged a number of other aspects in regard to the seriousness of arrears, the significant degree of loans to companies in which the principals of Argosy were officers as well as the abnormal heavy preponderance of investments in western Canada. Additionally there was some indication that the company was not adhering to the percentage formula of their participation in syndication mortgages. At this juncture"--this juncture

is in the summer of 1979--"we decided we could not continue our support and requested our lawyers to examine our security package to ensure that it was in order so that we could follow through with a demand for payment with complete confidence."

Let me stop there and remind you that the series II debenture prospectus did not go out until November 1979.

"Major discrepancies were identified which dictated another course of action until such time as our protection could be perfected. At the same time we moved to acquire additional security with this being done as expeditiously as possible considering the circumstances and the complexity of the connection."

Mr. Kerzner: I am sorry to interrupt, but are the discrepancies they are talking about not discrepancies in the security rather than discrepancies in financial information or that sort of thing?

Mr. Bellmore: I believe that is fair. The security was not there.

Mr. Kerzner: The lawyers thought that somebody had not filled out the right form, registered the right document or done some other legal thing to make bank security as effective as the bank would have hoped it to be.

Mr. Bellmore: Yes, they were taking steps to protect their own security at this time.

Mr. Kerzner: I wanted to be sure that we knew the kinds of discrepancies they were really talking about.

Mr. Bellmore: "Eventually we obtained the personal guarantee presently held from Carnie and Saunders together with an assignment of \$1 million life insurance and the shares of Austin Investments along with a new debenture which was registered two and one half weeks prior to the appointment of the receiver. A secondary pledge of London Loan shares was furnished in mid-March concurrent with the receiver's appointment with approval of our legal counsel."

Let me finally take you to page 386 of this book. This was a letter of complaint from the senior vice-president of the Royal Bank to the Toronto Star, complaining about an article that Diane Francis, a reporter for that paper, had written about Argosy. She made some comments in her article about the bank.

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Mr. Shymko: That April 16, 1980, letter we just went through: Is that the first time the head office of the Royal Bank was looking into it?

Mr. Bellmore: No.

Mr. Shymko: So far, you have been going through local managers of banks. Was head office aware of these things at any stage prior to April 16, 1980?

Mr. Moore: Yes. I believe, without taking you through all the documents, Mr. Gorman, who was a senior person in Toronto, had been involved on quite an intensive basis since--

Mr. Shymko: What is the earliest date?

Mr. Moore: I would say, at the time when the decision was made to have Laventhol and Horwath go in and do the review.

Mr. Shymko: Namely?

Mr. Moore: May 1979. He was the senior person in the Toronto head office, and I believe, without taking you through it, there were communication reports from time to time from him to others.

The article Ms. Francis had written had pointed some criticism at the Royal Bank's behaviour in this matter. Mr. MacPherson of the head office of the Royal Bank wrote to the Star. It was printed. It is contained on page 386:

"Diane Francis has quite properly expressed concern in recent columns about the victims of the collapse of Argosy Financial Group of Canada Ltd. She is, however, quite incorrect in suggesting the Royal Bank should bear some of the blame for the losses Argosy investors suffered.

"She has stated that, as the banker to Argosy, the Royal gave bad advice to people interested in investing in the company."

Mr. Ashe: She is right.

Mr. Bellmore: "Financial journalists usually recall banks are not permitted to give investment advice." Query that statement. "Additionally, our ethics and our rules on confidentiality restrict what we disclose publicly about our customers." You will remember the letters consenting to that.

Then we go on: "When we received inquiries about Argosy in mid-1979, it was our belief"--in mid-1979--"the company was sound." That is when Laventhol and Horwath went in as their agents. "When asked, we said Argosy was, to our knowledge, reputable. We believed this to be true to the extent we were extending fresh loans to Argosy throughout 1979." That was not so either. They had stopped.

Mr. Mancini: When did the loans stop? In the spring?

Mr. Moore: The bank line of credit was increased to \$5 million in the fall of 1977, I believe, and it was never increased beyond that amount. However, as time went by, particularly in the fall of 1979 and the early part of 1980, there were excesses over that line, but the line of credit was never approved beyond \$5 million on any permanent basis.

Mr. Mancini: So they overdrafted their line of credit?

Mr. Moore: They exceeded their line of credit at the end by about \$500,000.

Mr. Mancini: That was right in 1979?

Mr. Moore: That was in the summer and fall of 1979 and the early months of 1980.

Mr. Mancini: And the banks cashed the cheques?

Mr. Moore: Yes. There was a facility extended to allow those excess cheques to go through.

Mr. Kerzner: You already saw earlier this morning, in the excerpt you gave us at page 468, that the bank said it had rejected requests for additional credit to expand operations in the fall of 1978 and early 1979.

Mr. Moore: I think it said throughout 1979. That is quite right.

Mr. Ashe: Where was the tie-in? You recall the indication that, with the approval of one of the debentures, and I forget whether it was series I or series II, they were prepared to double the line of credit?

Mr. Bellmore: I think it was series I.

Mr. Ashe: Did they never do it?

Mr. Bellmore: Yes, they did. They did double it from \$2.5 million to \$5 million.

Mr. Ashe: It was \$2.5 million to \$5 million, rather than \$5 million to \$10 million?

Mr. Bellmore: Yes.

Mr. Kerzner: That was in 1977?

Mr. Bellmore: That was in 1977 in connection with the series I.

Then the conclusion of this letter, the last paragraph, says: "Unfortunately, Francis has produced a one-sided story. It should be understood that we too were a victim of the Argosy debacle."

Mr. Berger: My God.

Mr. Bellmore: Yes. Then I would like to take you, if I could, to the investor profile that the Ombudsman himself filed at the opening of this hearing. I will refer you to page 2, where he deals with an analysis. He did a profile of the reasons the investors gave him for choosing an investment in Argosy. Why did these people invest? To what extent did they rely on government and to what extent did they rely on others, private parties for whom government--

Mr. McLean: How much did the banks lose, if anything?

Mr. Bellmore: They lost their \$5 million, as I understand it.

Mr. McLean: Anything more than that?

Mr. Bellmore: We do not yet have the final report as to the receivership, even as we are here today.

At page 2 of this investor profile that has been filed by the Ombudsman, he compiled an analysis of the reasons given to him by the people who were claiming compensation or asking him to report that they should get compensation. As to the reasons why those people invested in Argosy, on page 2 of that profile--it is the second-last page of the document.

Mr. Shymko: Are you referring to the Ombudsman's introductory statement?

Mr. Philip: No. It is a five-page document, dated April 13, 1987, and it says, "Argosy: Complainant Profile." It is a separate handout.

Mr. Bellmore: I refer you to page 2, which is the second-last page of the document, where it gives the reasons why the investors chose Argosy: "In 62 of our files, complainants have provided us with information about their choice of the Argosy Group, and about the kinds of inquiries they made and information they relied on in making their investments."

Then he lists them:

"1. Banks: Nineteen of the 62 investors (more than 30 per cent) cited advice from their own or Argosy's bankers as determinative"--I emphasize the word "determinative"--"in their choice to invest in Argosy. A further four investors stated that the involvement of a well-known trust company led them to believe it must be a sound investment.

"2. Advisory Agency: Twelve of the complainants stated that they consulted a well-known advisory agency on businesses, and received advice that encouraged their investment in Argosy." That is not government; that is a private advisory agency. So 12 of the 62, about 20 per cent very roughly, of the complainants analysed by the Ombudsman indicated that they made their decision based on that.

"3. OSC/Registrar: Eight persons advised that they had contacted the OSC and/or the registrar of mortgage brokers for advice on this investment." That is about eight per cent.

There were 30 per cent on banks, 20 per cent on advisory agencies and eight per cent on the regulators.

Mr. Shymko: Are you trying to insinuate that these percentages you keep quoting are the factors involved in the whole scandal and fraud, or what?

Mr. Bellmore: No, I simply refer to that. This is the Ombudsman's report and it shows the kinds of reliance that the investors, the claimants who filed claims--

Mr. Shymko: It is not everybody. It is just a survey of a few of these investors.

Mr. Bellmore: Yes, we did not have access to all the complaints the Ombudsman had from investors. These are his figures, I emphasize. I have not had a chance nor have I seen all the claims that have been made, but the ones that he has analysed for you show you that sort of figure.

Mr. Shymko: You are using that as a supportive argument for your case, obviously, by citing other factors?

Mr. Bellmore: Yes.

Mr. Shymko: I worry when you mention the percentage figures because, you know, we are looking at factor determinants of the whole aspect which concludes with compensation. I just wanted to say that we should be very careful, when we listen to percentages, not to conclude that you are equating this with a factor element.

Mr. Bellmore: No. I am simply making that observation and referring

you to those bank letters in reference to the Ombudsman's report that government failure should compensate for one half of the loss.

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Mr. Shymko: Again, if I may conclude, Mr. Chairman, the last part, namely, the securities commission and the registrar, you stated is an eight per cent figure, that is, eight per cent of those who were surveyed said they went to government agencies and received a sort of green light. I would be very careful in using the eight per cent figure because even the registrar said his assessment is higher. He said 10 per cent in terms of factors. Let us not play a game of percentages and factors and other things.

Mr. Bellmore: I am sorry. I did not intend to suggest that those figures should be a way of allocating the loss.

Mr. Shymko: That is what I wanted to hear.

Mr. Bellmore: I just wanted to observe that it would appear from the Ombudsman's figures that a greater proportion of investors relied on banks and financial advisers than on the Ombudsman. How you allocate that percentage is really a matter for your determination, but I think it is important for you to consider at least.

Mr. Philip: Are you finished? I want to question that, but I do not want to interrupt your flow.

Mr. Bellmore: I was going to turn next to the auditors very briefly, but if you have any questions on the bank matters--

Mr. Philip: You are not going to be referring to any more documents from the Royal Bank then?

Mr. Bellmore: Those are just a selection I put in there. There are a number of other documents which we have filed for your review, and I could deal with any of those if you like.

Mr. Philip: Is it not fair to say that the major argument of the Ombudsman is not that parties other than the regulatory agencies have been duped--he admits that--but rather that the regulatory bodies did not follow procedures that were open to them to investigate? I submit to you that even if no one called them, that would not have any effect on the essential decision we have to make. The essential question surely is whether there were processes in place and whether those processes were followed. If they had followed them and had been duped the way that the Royal Bank apparently was duped, then I do not think the Ombudsman has a very strong case.

Whether one person called the registrar of mortgage brokers and only two people called the securities commission does not make very much difference to me. Maybe the people out there do not know about the registrar of mortgage brokers; maybe they are not very sophisticated investors and do not know about the Ontario Securities Commission.

By the securities commission's own admission, by your own admission, if a company was under investigation, you could not give out any information anyway. So a sophisticated investor would know it was no good calling the commission, because it would not even tell him whether the company was under investigation. The sophisticated investor would not call because he would feel

he would not get the information; the unsophisticated investor likely would not call because he would not know about it. So I really do not know what you are proving.

The only document, though, that I think is of some interest is the one on page 360. Would you not admit that is the only document that any regulatory body, namely, the securities commission in this case, would have had access to? I suggest to you that if you could prove somehow that the regulatory agencies had the Royal Bank material at the time at which what I would call acts of omission were committed, then I think you might have some argument.

You could say, "Look, we had all this evidence from the Royal Bank that said that the company was operating properly and, therefore, an appropriate investigation was not warranted." But the only document you had, in fact, was the Royal Bank letter on page 360, so I really fail to see what you are proving. You are proving that the Royal Bank was duped, but the Ombudsman has admitted that. We all admit that. That is not under question.

It would not even be under question if the securities commission and the mortgage brokers' registrar were duped, as long as they followed the appropriate procedure. In this case, you cannot even use these letters as proof to show that the registrar did not follow procedures with the excuse that there was evidence that everything was okay from the Royal Bank, because he did not have these letters.

Mr. Mancini: The testimony we heard yesterday from Mr. Beck on behalf of the securities commission was--

Mr. Ashe: Speak up. We cannot hear. Stop mumbling, Remo.

Mr. Mancini: I will ignore the ignorant interjection.

Mr. Ashe: We cannot hear.

Mr. Philip: Can we turn up the volume? Some people do not speak as loudly as others.

Mr. Mancini: The testimony we heard yesterday from Mr. Beck on behalf of the securities commission basically was that as far as the people there were concerned, they did everything they thought they had to do. The question of whether they should have done more or should have guessed differently was something that could be determined from hindsight. Does counsel agree with that?

Mr. Kerzner: Yes, that is right.

Mr. Mancini: The question by Mr. Philip to these gentlemen is the same question. I was wondering, Ed, if you could help me out, whether you are trying to get a different answer from these guys or whether you really did not believe all that Mr. Beck was telling us.

Mr. Philip: No. The point I am making is that this really does not change the issue. We already know that the Royal Bank was duped, and the very fact that the Ombudsman is granting only 50 per cent is an admission that a number of investors and, indeed, the regulatory bodies themselves and the Royal Bank were taken in. That is why the Ombudsman says in his rationale: "I am not going to give a full award. It is not entirely the fault of the regulatory bodies. That is why I am going to give only 50 per cent." If it

were entirely the fault of the regulatory bodies, then he would have had to suggest 100 per cent plus interest.

The second point I am trying to make is that if what they are saying is that certain people, particularly the registrar, did not follow up on what seemed to be suspicious evidence or certain suspicions, then they cannot use any of that as a rationale for saying: "The reason we did not follow up was that, after all, things seemed to be okay. The Royal Bank thought they were okay." Neither the registrar nor the securities commission knew that the Royal Bank said everything was okay, the one exception being the letter from the Royal Bank on page 360 to the securities commission.

Mr. Kerzner: There may be some confusion between the two series of debentures. It is very clear that Mr. Beck said that on series I, one of the things that made the OSC comfortable was the fact that the Royal Bank was saying it was going to double the line of credit it obviously thought these fellows were good for. It is on the series II debentures that they do not have anything from the Royal Bank and that none of these other documents we have been taken through were before the securities commission or could have influenced the decision that it made in respect to series II.

Mr. Philip: Okay.

Mr. Bellmore: Just on that last point, you will remember that the Royal Bank rejected the company's request for additional credit in the fall of 1978 and early 1979; yet into August 1979, it was advising and encouraging investors that Argosy was a good, sound place to put their money.

For example, look at page 378, the letter from Mr. Jensen, who was the manager in charge of this account, to John Mackey. He says: "The principals have an above-average knowledge of the mortgage field and would not knowingly risk themselves, their corporation or their investors in any portion of their portfolio. The only downside apart from the normal risks...would be the possible delay in completion of a project."

That is the thrust of this material. To a certain point, that can be said, but Mr. Beck indicated yesterday that the bank has its finger on the financial pulse of the company. More to the point, though, are the auditors of the company.

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Mr. Kerzner: Before you get into the auditors, could I just have one question on the Royal Bank before we leave it? What you have given us shows that the bank asks Laventhol to go in on June 22 and they report under date of August 30, 1979, which appears to be the first date that the bank gets a report that raises great big red flags about the company. The latest of the letters you have given us from the Royal Bank to investors appears to be dated August 10, 1979, which would be three weeks before the receipt of the first Laventhol report. Are there any letters that are available that indicate the bank continued to crank out that type of comfort or laudatory-type letter after they received the first Laventhol and Horwath report some time shortly after August 30, 1979?

Mr. Bellmore: Just on that point about when the bank started to have concerns, I would suggest on the documentation that the bank started to have concerns in late 1978 and early 1979, when it refused to extend any further credit to this company--

Mr. Kerzner: I appreciate that point, but bearing in mind that you took us through the bank docket that makes extensive reference to the negative features that the Laventhol and Horwath report of August 30 pointed out, I am wondering whether there is any indication that, once they get the Laventhol report, they continue to send the same kind of letter that they had been sending through either later 1978 or early 1979.

Mr. Bellmore: If I could deal with that point, at page 397 of the blue book is a bank report concerning Argosy, dated June 11, 1979.

"We refer to our telephone conversation of today's date and our previous meetings during which we emphasized our concern in regard to the existing line of credit in view of the nature of the investments the company has become involved in during the past year and their tendency to continue to expand in various directions, largely on borrowed capital. Until we are fully satisfied as to the safety of the mortgage portfolio we will not consider advancing further funds to acquire the trust company or to takeout the existing liability from the CCIB....We would like you to furnish us with a detailed report on each investment involving the syndicated mortgages, outlining the appraised value of land, whether construction costs etc. are fixed, if the project is proceeding....Frankly we are somewhat disappointed at this turn of events inasmuch as it was never believed on our part that propositions to interested parties would be considered."

At the bottom of the page, the last paragraph:

"All in all we feel our exposure to this and related companies is much greater than is evident at the present time and we wish to reassess our position in order to determine whether we wish to continue our support at any level. An indication of Mr. Carnie's aggressiveness, to our way of thinking, is outlined in the second point in your letter under reply wherein he is endeavouring to infuse an additional \$1.2 million in equity, \$700,000 of which has already been committed and in this regard it will be interesting to know what this proposition entails."

Over to the next page, page 398--this is Mr. Gorman, head office:

"Until detailed information is provided in response to the questions raised we are not in a position to deal further with the request and our willingness to pursue such will be totally dependent on the level of comfort to be realized in the mortgage portfolio audit. If there is urgency on your client's part in concluding the financial arrangement for the proposed acquisition, then we will have to insist other sources be investigated."

If I could just--I will not take you through them individually--

Mr. Kerzner: Is that not what leads, though, to Laventhol's being appointed 11 days later, on June 22?

Mr. Bellmore: That letter suggests there were very major concerns at that point, which emanate from what the bank itself is seeing and it is saying, "We had better put an agent in there to really check this matter out."

Mr. Kerzner: I understand that, but am I correct that after it received the Laventhol and Horwath report of August 30, there do not appear to be any more of these laudatory letters coming from the bank?

Mr. Bellmore: Let me give you another date--

Mr. McLean: Just answer his question. I would like to know if there were any other letters after August 30.

Mr. Bellmore: No, not that we have at this time. We have not seen the letters that the Ombudsman received. Whether that has been investigated from the Ombudsman's side, I do not know, but these are the documents we have been able to uncover.

Mr. Kerzner: And this came from the OPP as a result of the investigation they did leading up to the criminal charges?

Mr. Bellmore: Yes. That is correct.

Mr. Kerzner: So they did not have any that are apparently dated after August 30, 1979?

Mr. Bellmore: Not that we are aware of.

Mr. Kerzner: Okay.

Mr. Bellmore: If I could take you next to page 393--

Mr. Shymko: Could I ask a question? Was the commission in any way aware of this concern of June 11, 1979?

Mr. Bellmore: No, it was not.

Mr. Shymko: Two years earlier, the securities commission had requested some information from the Royal Bank as to its client. When it received confirmation of the \$5-million extension of line of credit, the Royal Bank, having known that there was an interest and an investigation by the commission some two years earlier and having realized in 1979 that there were some serious problems, the simple mind out there--and I consider myself as a simple mind out there--would have gathered that the Royal Bank would have notified the commission of this very serious problem it had discovered with Argosy.

Is there anything in our statutes or in law that binds financial institutions, particularly our major banks, to inform the securities commission when they detect such serious problems?

Mr. Bellmore: I am not aware of any specific provision in any statute to that effect.

Mr. Kerzner: The law is exactly the opposite. The bank would have to maintain customer confidentiality unless the customer authorized the release--

Mr. Shymko: So that confidentiality extends all the way to the securities commission as well?

Mr. Kerzner: They could not volunteer it without the customer authorizing it. The only way the commission could get it would be to hold a hearing at which it would subpoena the bank, and under subpoena the confidentiality does not exist. But in terms of the bank alerting someone to what it feels is a dangerous situation, it could not do that without its customer's consent.

Mr. Shymko: I was questioning what they are legally bound to do and what they responsibly should do.

Mr. Bellmore: What Mr. Kerzner said is that it could not notify the commission of these adverse indications that it was finding because of customer confidentiality. But you will note that that customer confidentiality did not deter it from reporting very laudatory comments to the investors about this company.

Mr. Kerzner: That is not fair. The company specifically authorized the release of that information. It consented to the banker releasing that information.

Mr. Shymko: Yes. That information went to the investors because there was a request by the investors. There was no request by the commission.

Mr. Kerzner: And a consent by the company.

Mr. Bellmore: It was an authorization.

Mr. Shymko: An authorization or something like that.

Mr. Bellmore: But that was what was happening on the investors' side.

Mr. Shymko: So what one assumes should be a sense of responsibility and duty in a nonlegal obligation really is no argument.

Mr. Bellmore: Let me go to the next part, the auditors, which is who the commission relies upon. The auditors, of course, do have access to all the corporate records and financial records of a company when they do their audit.

Mr. Shymko: And are auditors not bound to report to the securities commission?

Mr. Bellmore: They are. Yes, indeed.

Mr. Shymko: Okay. Let us listen to that.

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Mr. Bellmore: Let me take you to the black binder, which is the material that was filed at the opening of the hearing, on page 281, tab 16-B. Page 281 is the prospectus for the series II debenture.

Mr. Shymko: Are you talking about 16-B, volume 1, or 16-B, volume 2? What page is that?

Mr. Bellmore: It is page 281 in the black, four-ring binder.

This is a draft of the final prospectus that was filed with the commission in connection with the series II debentures in late 1979. This is a draft. The final one was in November, but essentially this one is the same as the final one. Mr. Kerzner reviewed the final one with them, and I believe it is agreed that this is an accurate copy of the one that was finally filed.

First, at the top of that page--this is the information that the debenture holders receive when they contemplate the investment in Argosy--at the top of page 281 you will see it says: "No securities commission or similar authority...has in any way passed upon the merits of the securities offered hereunder, and any representation to the contrary is an offence. This prospectus constitutes a public offering of these securities only in those jurisdictions where they may be lawfully offered."

On page 287 over to the top of page 288, the risk factors are identified for the reader of the prospectus. I refer to the first full paragraph on page 288:

"Investing in real estate and development of real estate projects is a highly competitive undertaking and subject to numerous risks including changes in interest rates, availability of mortgage funds, real estate tax rates, general or local economic conditions, government rules, fiscal policies, acts of God and other factors beyond the control of an investor or developer."

Going down to the next paragraph:

"In addition, certain of the officers, directors and shareholders of the company are engaged in the business of development of real estate, and while the company has in the normal course of its business invested in mortgages of certain of such real estate development projects undertaken by such related parties, based on the knowledge and information relating to such projects made available to it by virtue of such relationship, nevertheless such loans having been made to related parties carry with them a further inherent risk which should also be considered by purchasers of the securities being offered by this prospectus. Reference is made to page 24 and note 9(Cc) of the notes to consolidated financial statements commencing on page 29."

Mr. Ashe: Is it safe to conclude that that kind of paragraph was inserted at the insistence of the commission? I doubt that the proponent would put that in on his own volition to start with.

Mr. Bellmore: Yes, I think that is fair assumption.

Mr. Ashe: I mean it is somewhat of a damning paragraph, frankly.

Mr. Bellmore: Yes, it is. Now, over to page 319, if I can take you to that, note 9--these are all to be found in the prospectus that the investor receives; these are the notes prepared by the auditors--is "Related party transactions." You can see there, for example, for December 31, 1978, which is the last audited financial period of the company, the interest in mortgages total was \$6.3 million; of that total, \$3 million was from related parties, almost half.

At page 320--this is what the auditors have said; this is their certification to the commission, to the readers of the prospectus and to anyone who reads their report:

"We have examined the consolidated balance sheet of Argosy as at December 31, 1978, and the consolidated statements of income, retained earnings and changes in financial position for the five years then ended. Our examination was made in accordance with generally accepted auditing standards, and accordingly, included such tests and other procedures as we considered necessary in the circumstances. In our opinion, these consolidated financial statements present fairly the financial position of the company as at December 31, 1978, and the results of its operations and the changes in financial position for the five years ended December 31, 1978."

There is the auditors' report on the financial information contained in the prospectus which the Ontario Securities Commission requires the auditors to make available in the prospectus. If you look at the auditors' report, at the bottom of page 320, the date of that report is February 16, 1979. It goes on, "July 1, 1979, as to note 9"--that is the related party note--"and August

20, 1979, as to note 10" for subsequent events. So the audited statements for the year ended 1978 were given, in the words of the accountant, to be a fair representation of the financial position of the company.

Mr. Shymko: Do investors get copies of such a report, all of them?

Mr. Bellmore: The debenture investors get a copy of the prospectus and the prospectus (inaudible). It is the financial statements.

Mr. Shymko: So only those who had those series II debentures would have seen this?

Mr. Bellmore: I do not know whether that follows in that those audited financial statements would be presumably available to any investor who sought them. They were available to the bankers of the company.

Mr. Philip: In fact, they were not sent out to the investors?

Mr. Bellmore: By whom?

Mr. Philip: By Argosy.

Mr. Bellmore: They were certainly sent out to the debenture investors. Whether they were sent out to the--

Mr. Kerzner: But not to the syndicated mortgage people. Poor old Mr. Pacey in rural Quebec sure did not have one of these handed to him when he put up his \$5,000 or \$10,000.

Mr. Bellmore: We do not know about that, but there is certainly no evidence that they were sent to them.

Mr. Shymko: Would Mr. Pacey in Quebec be sophisticated enough to notice the related parties' \$3 million versus the things that you, as a sophisticated expert in these areas, would detect? Would the average person out there even realize that there are some problems with the related parties' amount compared to the \$7.9 million of the total related parties' amount receivable and things like that?

Mr. Ashe: It is described under the risks.

Mr. Shymko: Yes. The risks could probably highlight some concerns.

Mr. Philip: Surely the issue, though, is that the syndicated investors did not receive any. The other investors probably did not receive any unless they requested them, and even if they did receive them, since they were small investors, chances are they would not know what to do with them anyway.

Mr. Bellmore: Then that really runs to, why have prospectuses? That is the way the system is designed to work. That is what the regulators are supposed to do. You may say, "That is not enough," and maybe they should each have an individual investment adviser provided by the government before they invest their money.

Mr. Philip: Surely another--

Mr. Bellmore: Let me just complete it. We are here to look at the conduct of the regulators, and the regulators are confined by the statute.

They have to operate within the confines of the statute, and the statute requires them to ensure that the auditors and the board of directors make full, true and plain disclosure in the prospectuses. That is the point the commission is making here.

Mr. Philip: I am sure you would admit, though, that part of the rationale in demanding a prospectus is not simply disclosure but also that the very act of providing a prospectus to the Ontario Securities Commission gives a red light to the securities commission that there is a problem.

Mr. Bellmore: Yes.

Mr. Philip: So the rationale is not just disclosure, as you were kind of implying two seconds ago, but rather is a process whereby in a sense it is a form of justification: "I am clean, there is nothing wrong, and you guys do not have to look further into my operations." That is at least 50 per cent of the demand of the prospectus.

Mr. Bellmore: The prospectus requirements of the act require that the commission ensure that full, true and plain disclosure is made about the company's financial affairs. To accomplish that, the commission requires that, in this case, audited financial statements of the company by a professional firm of accountants be included in those statements. They rely upon the accountants, who have the power and the responsibility to get right into all the details of the company, to investigate the financial status of the company and make a complete and accurate report of its financial status and, in effect, to put their firm name on the financial statements by way of an audit opinion. That was done in this case.

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Mr. Philip: No one disagrees with that, but you are conveniently skating around the point I was making. I am not going to repeat the point. I think I have made the point; namely, that the purpose of the prospectus is not just the disclosure, but also to give a signal to the regulators as to whether they should take further action to find out whether something is wrong.

Mr. Bellmore: That signal was given. You heard the evidence about the investigation that was made by the prospectus accountants, the comfort letters, the follow-up that was made. Ultimately, a judgement call was made that the auditors were a respected and leading accounting firm. They had come to the conclusion that the financial status of the company was the way they had reported it in their reports, and they relied on that.

Mr. Philip: We will be hearing a different version of that from the Ombudsman, no doubt, in a few minutes.

Mr. Ashe: In very brief terms--forget this one for the moment--can you outline in a 500-words-or-less kind of thing the responsibilities of the Ontario Securities Commission vis-à-vis the good or bad aspects of an investment? It is my understanding--and this is where I may be wrong and may differ from Mr. Philip--that it is your responsibility to go through all the checks and balances and make sure everything is there.

I am sure you look at some of these things and say, "God, I would not put a nickel into that, but they have met all the responsibilities, laid it out, the auditor's statement, the speculative nature, etc." Am I wrong in what your role is, or are you supposed to be only putting the seal of approval on what you feel are good investments for people?

Mr. Bellmore: You are correct.

Mr. Ashe: Forget this one for the moment. Generally speaking, what is the mandate of the securities commission?

Mr. Bellmore: Indeed, that is the steam and purpose of the act, and that is the significance of the disclaimer that appears at the very beginning of every prospectus. The commission is not passing on the merits of this investment.

Mr. Philip: If the company does not have its books in order or if there is something wrong, the commission may, in fact, deny the issuing of the prospectus. That is a judgement call.

Mr. Bellmore: That is right.

Mr. Philip: You are not saying this is a good risk or a bad risk; but, by heck, if the figures in the prospectus are not good, then that is an indication that there is something wrong and you do, in fact, refuse the issuance of a series.

Mr. Bellmore: The chartered accountants represented in an opinion to the commission that the company status was what it was on December 31, 1978.

Mr. Hennessy: It seems to me, sir, that the average person is like myself. I invest money in a term deposit, because I figure it is good. I do not know anything about the ins and outs. Some people make a study of that. The average person--and there are many of those people in this room--depends on people like you to protect his interests, and I do not think you are protecting his interests the way you should. That is my honest opinion.

I am going to go back now and check my investment. Maybe I will listen to somebody else and he will say it is a good idea. As my colleagues have said, you are not taking care of the little guy who really does not have a lawyer or somebody in the financial field to advise him what to invest in. This is why people get fooled when they figure the securities commission is going to look into it. "As long as the government says it is all right, then it is okay with me."

If you just more or less follow the guidelines and you know in your own heart that you would not put a plug nickel in that firm, but you go ahead and recommend that it is all right because they have used the guidelines--I think the guidelines need to be changed drastically, because in six, seven or eight years from now, the same thing is going to happen again in a different way with somebody else.

Mr. Bellmore: That certainly is a point of view, but in this case that does not, with respect, indicate regulatory failure. That is the point I am seeking to make. There may be deficiencies in the law as it is and as it should be, but the question here is whether the taxpayers should be called upon to compensate investors for some sort of regulatory fault.

You mentioned you put your money in a deposit. That is the important distinction here, as Mr. Beck indicated yesterday. There are deposits, which are insured, and there are investments, which are not. Now, it is one thing to require government to compensate depositors who are getting one or two or three percentage points less than the investor, but it is another thing to call upon the taxpayer to indemnify investors who put their money in uninsured investments. That is the difference. I have just one final thing.

Mr. Offer: There is a touch of fuzziness around the purpose of the prospectus. I just wanted to get it very clear that, basically, the prospectus--as far as you are concerned, from what you are indicating to us--clearly and accurately represents the standing of a particular company at a particular point in time, without commenting on the fragility of the company. If anyone wishes to read the prospectus by himself or with anybody else, he will be able to see how that company stands, and it is up to that person to decide whether he wishes to partake in the issue of whatever the offering happens to be.

It is the mandate of the Ontario Securities Commission, through its investigatory powers and through its reliance on auditors and everyone else, to make certain that what is contained in the prospectus is true and correct, as best as it can determine.

Mr. Bellmore: That is a correct analysis.

Mr. Philip: I was not disagreeing with that. What I was trying to say, and maybe I did not say it too clearly, is that the process itself is a regulatory process and that it is a discovery process and an investigative process, if you like. So the prospectus serves two purposes: one is disclosure; the other is that the process itself can reveal whether a series should be issued or whether a prospectus will even be granted--that, in fact, is a policing function.

Mr. Kerzner: Before we leave prospectuses, is my reading of the series I prospectus correct, that there is no statement in the series I prospectus that is the equivalent of the risk factor statement that we see in the series II debenture?

Mr. Bellmore: Yes, the series I prospectus--

Mr. Kerzner: So, was it yes, my reading of that was correct?

Mr. Bellmore: Yes, that is correct. It contained the audited financial statements of the company for the year ended 1977 which, once again, disclosed the company's financial position.

Dealing with the question of the commission following up on the auditors, it is fair to say that the commission's obligation is to make sure that the financial information is full and true and complete disclosure. As observed yesterday by Mr. Beck in respect of the series II prospectus, they spent a year looking at every deficiency. The 100 deficiencies identified by staff were all answered by the auditors. Positive assurances were given--if I can refer you, for example, to page 25 of the blue book. This is a letter from the law firm of Seed, Howard, Long, Cook and Caswell, the lawyers for the company, to the commission, which sets forth the discussions that had been had at an October 15, 1979, meeting with the auditors, Mr. Steele, the prospectus accountant, and the principals of the company.

As an example, one of the concerns that the prospectus accountant identified in the audited financial statements was the allowance for doubtful receivables. He flagged that in his deficiency letter, the accountants and lawyers met with him to discuss that, and representations were made at a meeting that was held, according to this letter, on October 15, 1979. This letter sets out or confirms the matters that were discussed. In reference to the allowance for doubtful receivables, at page 25, paragraph 9(b) says:

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"Again on Monday last, we discussed at length the adequacy of the \$360,000 allowances, and this will confirm that at such time the representatives of the company and of its auditors there present confirmed to Mr. Steele that an allowance based on appraisals less legal and appraisal fees is allocated to specific accounts and reviewed every six months by management. These allowances are subsequently reviewed by the company's auditors. In addition to the specific allowances allocated to specific accounts, there is a small general provision that is made on an interim basis monthly between the sixth-month and year-end review. The monthly provision for all debts is based on prior year losses and currently \$14,000 per month is being provided with, by the way, a reduction in the retained earnings by the amount of such provision being reflected in the prospectus as at August 31st last. This will confirm also that at such meeting the representatives of the company and of its auditors there present expressed to Mr. Steele their satisfaction with the adequacy of the allowances at April 30th last and, further, that none of them considered that there was any cause to change the method of establishing the allowance."

This just exemplifies the situation Mr. Beck addressed yesterday. The prospectus accountant does have a role. He has a role to check on these audit statements, make sure they are accurate, and he did that. He fulfilled that completely.

Mr. Shymko: How many deficiencies were looked into?

Mr. Bellmore: Initially, I believe the indication yesterday was more than 100.

Mr. Shymko: Is that normal, in most cases, to have more than 100 deficiencies?

Mr. Bellmore: Absolutely not. I believe Mr. Beck indicated this was one of the most intensive reviews ever made. Ultimately--

Mr. Shymko: And yet they qualified for a prospectus.

Mr. Bellmore: Ultimately, it came down to a judgement call. On the one hand, the prospectus accountant had some reservations. On the other hand, the auditors were saying, "In our professional opinion, the statements are accurate; they are true and plain disclosure," and as the prospectus accountant indicated in his notes when he signed off the file, his reservations were of a subjective nature and, in deciding to approve the prospectus for filing, he was relying upon the written and verbal assurances he had received from the auditors that these financial statements contained true, plain and accurate disclosure of the company's affairs.

One other point, if I can refer you to page 323 of the black book, you will see one of the other things the commission does in its prospectus is that it requires the board of directors of the company and its officers to go on record that these are true and accurate representations of the company's affairs.

You will see the representation at the top of page 323: "The foregoing"--referring to the audited financial statements and the disclosure that is contained in the prospectus--"constitutes full, true and plain disclosure of all material facts relating to the securities offered by the

prospectus as required by part 7 of the Securities Act (Alberta) and the regulations thereunder and by part VII of the Securities Act (Ontario) and the regulations thereunder."

I can tell you that all the board of directors, most of whom are from outside the company, signed this representation.

Why does the commission do that? Why does the commission require the auditors to say this is a true representation, and why does it require under the act the officers and directors to sign? Charles Salter addressed that yesterday. He has indicated that the scheme of the act is to require an accurate statement of the financials of the company for the investor and to require professionals to put their professional reputations, so to speak, on the line, and the directors to be accountable.

Mr. Mancini: I agree (inaudible).

Mr. Bellmore: Not in here. They say very clearly, "This is a true, full disclosure of the company's affairs," and the directors--there is no disclaim, and they are in law, legally liable. The whole system is based upon making these people accountable if they make a false or misleading statement. They are either liable for criminal prosecution, if it is fraud, if they fraudulently sign them, or they are liable to be held liable in a civil suit if they do it negligently.

That accountability and the fear of those sorts of consequences are important aspects of disclosure. If we embark on a process where the Ontario government is compensating investors for the faults of others, then that will undermine the whole thrust of the act. This is an important factor, and that is why I bring it to your attention.

Mr. Shymko: I think the issue here is informing the investors; the awareness of the investors of that situation. The commission knew. In spending an entire year looking over Argosy's books and going through all the auditor's reports, you found 100 deficiencies. You indicated to me in an earlier reply that that is a very unusual situation. You knew that. If you personally had an investment in Argosy--let us assume you as an individual--and you were a member of the OSC staff, you would have probably looked at that and said, "Hell, anyone with any brains would not invest a dime in this company." You would have pulled out on the information you would have seen going through the books and the auditing, would you not have?

Mr. Bell: I would certainly recognize it as a very high-risk investment.

Mr. Shymko: Absolutely.

Mr. Bell: I would ask myself whether the potential gain and the higher return that Argosy was offering me for my money was worth that risk.

Mr. Shymko: I should not ask you a sort of fictitious personal question, but I truly appreciate the sincerity of your answer. Really, I think all of us in this committee do. I think that is the real issue. Had that information, had that reality in some way been communicated to all these people, I am sure, under the circumstances, there would have been a run on the bank. I just feel that when one detects such problems, that should be communicated in some way. When the level of risk is so high and there is real, serious, reasonable questioning of the intelligence of investing in such a

company and of dealing with it, that somehow should have been communicated. That is all I am asking.

Mr. Bellmore: Mr. Shymko, that is a very profound question. In my view--and I would submit it to you--the risk was disclosed. The process of investigating and getting the answers to those 100 deficiencies resulted in numerous revisions until they came forward and said, "This is the risk you are taking." It may be that in a different scheme of things that should have happened, but that was not the way the commission was structured to do business. All I say is that it should not be held liable for doing what--

Mr. Shymko: If I may use a vulgar term, you have covered your a-s-s by that first statement at the beginning which reads, "Securities Commission and similar authority in Canada has in any way passed upon the merits...." That one paragraph is the safety.

Mr. Bellmore: That is in every prospectus by the way. Bell Canada--

Mr. Shymko: That is in every prospectus, yes. You have to say that.

Mr. Bellmore: Yes.

Mr. Shymko: Okay.

Mr. Ashe: By law.

Mr. Shymko: My understanding is that the risk factors that you have put in--I believe, you answered Mr. Ashe when he asked was that extensive risk factor statement really at the urging of the commission. Obviously, you felt that should be red-flagging--if I may use the term--that risk factor element of the prospectus. But for the average person out there--and I think Mr. Hennessy insinuated this and I did--first, one would not understand what on earth those four lines meant. If I were to read it for the average individual, he or she would not understand what it meant, and when you listed all these risks, when you mixed them with acts of God, economic conditions and things such as that, the average person would say, "That is the standard thing that occurs." Risks of God are always there. Economic conditions and fiscal policies may change and interest may go up--

Mr. Ashe: You will not find that in a GIC.

Mr. Shymko: --but the 100 deficiencies aspect and the uniqueness of some of the serious problems you saw were not really communicated in the risk factors--truly, sincerely. I do not know. Are they?

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Mr. Bellmore: They are in there. All the commission can do is make sure they are disclosed. If people have difficulty understanding that, then the recourse, if they are considering investing \$20,000, \$30,000, \$40,000 in this sort of a matter and see risk factors--"Gee, I am not sure what this means"--they can go to a financial adviser or walk away saying: "I do not understand this. I do not want to put my money there."

Mr. Shymko: Once again, a number of people saw this.

Mr. Bellmore: That is the way the system is structured. It may be that there are deficiencies in the legislation, but the regulators have to operate under the act. The act mandates the disclosure.

Mr. Shymko: I understand that perfectly well.

Mr. Kerzner: Mr. Bellmore, I think you have the same disease that I have and every other lawyer has; our 15 minutes has turned out to be an hour and a half. If the members of the standing committee on the Ombudsman do not have any more questions, can we not get you wrapped up so that we can get on to the Ombudsman?

Mr. Bellmore: Yes. Those were the documents I wanted to refer to.

Mr. Chairman: Thank you for your answers.

Mr. Kerzner: With respect to the Ombudsman's response, it is going to be organized in the following way: Ms. Morrison will go first and deal with the registrar of mortgage brokers, Mr. Anisman will then proceed and deal with the Ontario Securities Commission and, lastly, I think Dr. Hill is going to have a couple of closing remarks. Ms. Morrison?

Ms. Morrison: I would first like to express--

Mr. Chairman: Sorry. Mr. Mancini has a question.

Mr. Mancini: I have a question before we proceed. Why was the 22-page letter sent to you by Mr. Beck not responded to?

Ms. Morrison: It was responded to through our report, which is our usual process. A response on what we call a 19(3), that is an interim report, is usually responded to as we take your views into account in writing our final report.

Mr. Mancini: You did not take the view that this was a letter sent to you that deserved a letter in response. You took the view that the problem was part of the--

Ms. Morrison: Part of the process.

Mr. Mancini: --part of the information gathering, and--

Ms. Morrison: It was. In fact, he stated it to be part of our process, a response to our interim report. As such, it is then taken into account in our final report.

Mr. Philip: If you do not do that, you have a tendency to have the ball going back and forth for ever.

Mr. Mancini: Beyond that, the letter would not be responded to, but I accept your answer.

Ms. Morrison: Before I begin, I would like to express some concern. I think when we came this morning, we understood the ministry was going to tell you which documents you should look at for about 15 minutes. I did not believe they were going to read the documents to you. Thinking that most of you actually are literate, I thought you might read them yourselves, but, in any case, we went home early from this committee yesterday afternoon on the understanding that the ministry had presented its case, and this morning we come back and the ministry is clearly presenting its case this morning.

Certainly, the Ombudsman wishes the committee to have all the information in front of it, so I am not complaining about you getting

information, but I would like to point out that there was somewhat, I think, of an unfairness to ask, in that we thought what we had heard yesterday was what the ministry had to say and there would not be fresh argument this morning.

Because a few questions have been raised by the ministry this morning, I would like to make a couple of remarks which are not ones that I had in mind about the registrar of mortgage brokers, but ones that respond in perhaps a very simplistic way to some of the questions you have raised this morning with the ministry.

The ministry has been talking to you about reliance--reliance on bankers, auditors, etc.--and I have a couple of small comments to make about that. The Ombudsman has never suggested that the regulators ought not to rely on professional opinions of auditors, bankers, etc. What the Ombudsman has suggested is that in these circumstances this was not sufficient, because staff of the regulatory agency itself had grave concerns and did not find these comfort letters comforting. In circumstances where the ministry actually has information that would lead it to look further, it cannot use as an excuse the fact that it has a so-called comfort letter.

The other thing I want to comment on is what seems to me a very strange argument that the ministry is making about investor groups.

Mr. Mancini: Is that part of the law or is it part of the normal procedure?

Ms. Morrison: I think we are finding the ministry's actions unreasonable for the reason that it had grave concerns, notwithstanding the comfort letters.

Mr. Mancini: Let us get to the specifics. You said that the ministry should not rely on comfort letters to an extreme point, but is that part of the law or part of the historical procedure, or is that just what you think it should be doing?

Ms. Morrison: The Ombudsman is not in a position where he has to measure whether what the regulatory agency did is in the strictest conformity with the strictest principles of negligence. The Ombudsman looks at what the regulator did and says, "Was it reasonable in the circumstances to shrug your shoulders when you knew there was a problem here?" The Ombudsman is not concerned whether the regulator must look beyond the comfort letters; the Ombudsman says it was unreasonable not to do that, not to look further when you had serious concerns, notwithstanding the comfort letter. That is the first point.

Mr. Offer: On a point of clarification: When you are talking about the ministry looking out for it, are you talking about the registrar or are you also including the OSC and, as such, including audit reports?

Ms. Morrison: I am talking about the regulators in general at this point.

Mr. Offer: Are you saying it is unreasonable for the government to have relied on audited statements from renowned accountants?

Ms. Morrison: I am not saying that. I am saying our report has found that the ministry was in a situation where it had information that would have

led it to dig deeper and it did not do that. As far as the other part of the ministry's argument about the investors is concerned, I understand it to be saying that the investors went to the Royal Bank and got from the Royal Bank a recommendation to buy this particular investment. Therefore, the regulators do not have the same responsibility to regulate. I cannot make that connection. Perhaps you can. I do not think the responsibility of the regulators is lessened or changed in any way by the fact that somebody recommended the investment.

Mr. Kerzner: The ministry's thought is that it does not remove the obligation of the regulator to do what he is supposed to do.

Ms. Morrison: Exactly.

Mr. Kerzner: However, it does lessen to an extent the contribution of the regulator's failure--if there was one--to the overall cause, if there were other contributing causes. That is the ministry's point.

Dr. Anisman: In fairness, Mr. Kerzner, there are two ministry points and we will come to them more fully. One of the ministry's points is, because of the circumstances and the obligations imposed on the commission, it exercised proper judgement. The second point is, there were other contributing causes to the harm to the investors. Those are two points which I think we will deal with separately as we go on.

Ms. Morrison: I will go on to the few points I was going to make about the registrar of mortgage brokers this morning before I turn it over to Dr. Anisman to discuss the ministry's presentation with respect to the OSC. I will be very brief about the registrar, partly for the reason that we are pressed for time and partly for the reason that I think it was covered very thoroughly when you had the ministry representative here. I think your counsel went through the points very carefully, went through the documents very carefully, and I would therefore only sum up very briefly some of the points that he himself brought out.

It seems clear with the registrar of mortgage brokers that there was trouble with Argosy almost from the very outset. Argosy first registered in January 1969 and by September of that year the registrar had initiated an investigation into Argosy's affairs; so it did not take Argosy very long to get itself into this kind of trouble. That very early investigation revealed the fact that John David Carnie had a charge outstanding against him.

The response of the registrar was to put some conditions on the registration of that company. Those conditions seem in some ways to be strange. One of the strange things is that the condition on John David Carnie seems to have been for one year only. It does not say that in the order. It is a separate condition from the year-long conditions which were agreed to, but we have been informed, and certainly the ministry argues, that it was a year-long condition. It is very difficult to understand how that condition might have helped. One year does not seem to be sufficient and, in fact, did not turn out to be sufficient.

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The other thing that was part of the condition in terms of keeping Carnie out of the business--

Mr. Shymko: That is a major point. Was it discretionary on the

registrar to make it more than one year or is the registrar bound by regulation or law that it can be extended only one year?

Ms. Morrison: No. In fact, it was extended another six months, as it turned out, but there was no reason it had to be a one-year condition.

Mr. Shymko: The registrar has a discretion to keep extending that condition.

Ms. Morrison: In technical terms, it should have gone back to a hearing. The registrar did extend it six months without going back to a hearing.

Mr. Shymko: But he could have extended it even then beyond the six months, even still more?

Ms. Morrison: He could have investigated again.

Mr. Ashe: I have to clarify something there. Was there a formal action? I do not recall but, again, I may have missed it. Was there a formal action and determination by the commission for that six months to extend it to the renewal year or is it just presumed that it happened? As I read it, albeit it was in mid-year, the conditions expired at December 31 and did not carry on for the six months that still remained in the licensing year. Which is right? That is not what you just said; at least that is not what I understood you to say.

Ms. Morrison: My understanding was that those conditions were effective until the relicensing. That was the information we were given; until the relicensing in the next June.

Mr. Ashe: That is not what the conditions say. The conditions say they shall expire December 31, 1974, and it was my understanding they did, albeit that was mid-year as far as licensing.

Ms. Morrison: I believe that term of expiry is on the conditions which were attached, but not on the added condition about John David Carnie, which was in the order itself.

Mr. Ashe: Which is right?

Mr. Offer: Counsel, could you refer us to that order?

Mr. Kerzner: It is in the handout we gave you. All I have to do is find it. In the handout of registrar's documents, at page 65 and following, is the actual order of the Commercial Registration Appeal Tribunal.

Mr. Shymko: Page 62 says, under section 11, "Subect to the terms and conditions herein, the registration of Argosy Investment Ltd. shall be renewed during a probationary period ending December 31, 1974." So the probationary period ends December 31, 1974. This is why the indication that there was a six-month extension.

Mr. Kerzner: Ms. Morrison's point is that it is only the conditions attached that have a 12-month limit on them. The remaining condition which is added by the CRAT, which uses terms like, "surrender and give up shares in Argosy," is not set forth in exhibit 3 and it is only exhibit 3 that contains the 12-month cutoff. I think that is the point she is trying to make.

Mr. Shymko: When you say there should have been a hearing, are you referring to section 12 on page 62, which says, "The condition of registration may be revoked by the tribunal during the probationary period"? Is there supposed to be a hearing to extend? I could not understand that.

Ms. Morrison: You will note on page 34 of our report that during June 1974 they discussed reregistration. According to a handwritten note, the division solicitor suggested another inspection at this point. He felt another inspection would have been worth while. None was carried out but reregistration was granted on July 11, 1974, subject to the tribunal's terms and conditions. The following year, when registration took place on June 30, 1975, AIL was registered without condition.

The other point we wish to make about this probationary registration is the fact that no checking was done during the probationary period. First of all, there is some question about whether a year's probation would have been sensible, but supposing we agree that a year's probation is sensible, that you should keep John David Carnie out of the business for a year, if you are going to keep him out of business for a year, it might make some sense to check again that he is actually doing this, which he was not.

It also might make sense to check a little bit behind the paper transactions here. There was all kinds of information available about John David Carnie's involvement in the parent company. Keeping him out of the mortgage business by just saying he was not involved in this subsidiary, when the parent company wholly owns the subsidiary and he owns 50 per cent of that, does not seem to make very much sense.

There was no checking as to whether he was actually abiding by the rules. Had there been checking, it would have been clear he was not abiding by the rules. In fact, as has been pointed out, the division solicitors suggested that an investigation be carried out again in 1974, but that was not done. They did not look behind the company, although they were well aware that there was a parent company. There were a number of very easy ways to check whether John David Carnie was involved in that.

As a finance company, that parent company was registered with the OSC every year, and those registrations had the names of the people who were involved. It would have been easy for them to find out that Carnie was involved, and had they found out he was involved, I think there would have been serious consequences.

They also knew from some other things that Carnie was still involved. There was a company called Wilcar. They had some involvement with Wilcar in 1974. They knew that Carnie and Williamson owned Wilcar. They knew that Wilcar was not a registered mortgage broker, but they received information in 1974 to indicate that it had been acting as a mortgage broker, which they did not follow up, and that it operated out of the same business premises as Argosy.

At that point, there were a number of things that pointed to Carnie's continued involvement, an involvement that should have caused the registrar some concern, and certainly the breach of these conditions would have later caused the OSC some concern, as was pointed out yesterday in Mr. Beck's presentation.

The registrar of mortgage brokers was very important to Argosy. They had to be registered in order to do their business as mortgage brokers. Had the registrar looked behind these terms and conditions, perhaps they would not

have been registered mortgage brokers. That would have affected all their business. Their prospectuses at the OSC state that they are registered as mortgage brokers; all their business depends upon that registration.

It is the Ombudsman's view that the actions of the registrar were unreasonable in not following up these very serious concerns his department had. We do not ask that the registrar of mortgage brokers go out and find criminals. Here, it was presented on a silver platter. They had the information, they did not have to go and look for it, and it was the Ombudsman's view that it was unreasonable for them, having had that information, not to have used it in a more serious manner.

The very last point I want to address about the registrar of mortgage brokers is the point that has been made a few times from the ministry's side, that the registrar's office actually is supposed to look after only borrowers and not lenders and, therefore, it did not matter that they did not follow up this matter more carefully.

I think a little later on, when the Argosy company comes to the attention of the OSC, you see the OSC saying, "We do not need to do anything about this company, because the registrar is looking after it." So you have on the one hand, the argument that the registrar looks after only borrowers and not lenders, and on the other hand, the OSC saying, when it comes to its attention, "It does not seem to be any problem for us to let this go and not worry about these syndicated mortgages, because, after all, the registrar is looking after this." It seems to me you cannot have it both ways.

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Dr. Anisman is going to talk to you now about the OSC, about some of the submissions you heard yesterday from Mr. Beck. When we are finished that, we will have a very brief summing up, and Dr. Hill would like to say a few words.

Dr. Anisman: Since I am not going to take you through any documents, I will probably be briefer than Mr. Bellmore, but I cannot promise that.

I am tempted also, given the time, to take the easy argument, or what I consider to be the easy argument, simply point out to you that Mr. Beck has admitted sufficient of the Ombudsman's conclusions to support the Ombudsman's recommendations and stop it at that. What I mean by that is that Mr. Beck yesterday agreed that the failure to communicate on the part of the OSC with the registrar of mortgage brokers was a failure that should not have occurred.

I think it affected--and I will come back to this and indicate how--the decision of the director with respect to the question of the syndicated mortgage interests and it affected the decision of the securities commission itself in 1978 when it decided to accept that Mr. Carnie had been rehabilitated. That one element, that failure of communication which manifests itself in both of those instances, alone is enough to support the Ombudsman's conclusions with respect to the regulatory failure having caused the harm to investors.

But to be frank, I think that would not be a fair response to Mr. Beck. It does ignore--if I stop there, at least, it would ignore--the most important issue raised before this committee, the issue focused on by Mr. Beck and to some extent by Mr. Bellmore. That issue is the standard under the Ombudsman Act that the Ombudsman applied in attempting to evaluate the conduct of the regulators in this case, that is, the standard of reasonableness.

That is not only the most basic issue before you, but also the issue that Mr. Beck described: whether the OSC and the registrar of mortgage brokers acted unreasonably in the pursuit of their regulatory mandate. It relates to the question that has been raised throughout this proceeding with respect to the exercise of judgement by government administrators. It has been suggested by you and to you that regulators need a sphere in which they can exercise judgement, with the potential for error, in which they are protected. That is part of their day-to-day activity, that is part of their mandate, that is something they have to do. They may make mistakes, but as long as they engage in a legitimate exercise of judgement, that should be permitted.

Mr. Beck suggested that. It is the basis of his whole argument and the Ombudsman does not disagree with him. The Ombudsman agrees there is a sphere for regulatory judgement, for the exercise of judgement by regulators. There is no question about that. But the Ombudsman has concluded here that the conduct of the regulatory agencies in this case went beyond that sphere.

It went beyond that sphere because the regulators failed to take steps that would have enabled them to exercise a proper judgement. They failed to take those steps in circumstances where they either knew facts that led them to believe that steps were necessary or, to take the second series debentures, a receipt for the prospectus should not have been issued. They failed to take steps in circumstances--and I am thinking of the syndicated mortgage interest here--where they should have known that further steps were required to be taken in order to enable them to apply their judgement to the full facts.

This type of failure, I submit to you, is not within the sphere of the exercise of judgement. In the circumstances of this case, the Ombudsman has concluded that it went beyond that and that those failures were unreasonable. I submit to you that the Ombudsman's conclusions in this respect provide the clear standard that Mr. Beck said was missing. It is a standard that permits the flexibility to administrators necessary to make their judgement, but requires them to exercise it properly. It is a standard that applies in areas of business and should apply as well in areas of government.

In the next few minutes--I hope it will be the next few minutes--I will attempt to go through the facts, as the Ombudsman understands them, and, in doing that, attempt to address the issues that have been raised by the ministry in its argument and to address the legal issues in the framework within which the securities commission operates, so that I can indicate the potential action that it could have taken and the ways in which it failed.

I do that with hesitation, because it will extend my presentation, my submission, but I think there is some difference of view between the ministry and the Ombudsman as to the meaning of the Securities Act and as to the powers that the commission has under it. It will become evident to you as I proceed.

I will follow the same order as Mr. Beck followed and as the materials follow. I will start with the syndicated mortgage interests. After all, they involve the major loss to investors, a loss that we now understand to be closer to \$19.2 million than the \$21.7 million that we previously understood, but it is the major loss.

I will proceed from there through the first series debenture prospectus and the second series debenture prospectus. I may have a few words to say about the registered retirement savings plan decision in concluding. In doing that, I will indicate why the Ombudsman continues to be of the view that the failure to regulate Mr. Carnie's activities did involve a regulatory failure.

What I will attempt to do as well, given the breakdown of my submissions to you, is to finish syndicated mortgages before the break at 12:30. Then I hope I will have your indulgence for another 20 minutes to a half hour, after the break, to conclude.

The Ombudsman had three conclusions with respect to syndicated mortgages. Mr. Beck addressed two. He addressed the Ombudsman's first conclusion that the decision of the director that the syndicated mortgage interests sold by Argosy were not securities was wrong. The second conclusion addressed by Mr. Beck was the failure on the part of the securities commission and its officials to investigate the facts in order to enable them to make a full judgement on the question of whether the syndicated mortgage interests were securities, in the light of full information.

The third element of the Ombudsman's recommendation, and the element that Mr. Beck did not fully deal with, was the element of the failure of the registrar of mortgage brokers to provide information to the securities commission, and the securities commission's failure to seek it, with respect to Mr. Carnie's activities in his capacity as a registered mortgage broker.

A different result with respect to each of these questions could have led to the requirement that Mr. Carnie obtain registration at that time as a securities issuer with respect to the syndicated mortgage interest and file a prospectus with respect to their sale, which would have at least provided full disclosure to investors.

I will address those issues in order. The first one is the correctness of the director's decision. Mr. Beck says not that the decision was right; he says that it is not susceptible to a right or wrong answer. He says the question of whether a particular investment vehicle is a security is only a matter of judgement, I take it--although that was not quite the way he put it--but it cannot be right or wrong, it is too complicated a question for that.

I merely point out that the OSC itself makes that decision on a regular basis. The commission decides that some vehicles are securities and that some are not, that some vehicles are within the exemptions and that some are not. They apply criteria enunciated by them and by the courts when making that decision. In the application of those criteria, there is a judgement call. No one denies that. The application of judgement is essential to the determination of whether some of the more complex investment vehicles, like these, are securities. But a judgement, I submit, can be exercised correctly or incorrectly; a judgement can be right or wrong.

In the light of what we now know of the syndicated mortgage interests that Mr. Carnie and Argosy were selling, I think we can safely say that the interests being sold were securities. There was an investment contract involved. I concluded that in my opinion for the Ombudsman. Mr. Stransman came to the same result. Mr. Stransman concluded he would have decided the matter differently. Without mincing words, I take that to be a conclusion Mr. Stransman thought the decision that those vehicles were not securities was simply wrong and that he would have come to a different judgement.

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Mr. Ashe: That is not what he says. Come on, now. Be fair.

Dr. Anisman: I am not trying to be unfair.

Mr. Ashe: The word "wrong" is an incorrect conclusion. There is no doubt what he said he would have done. He also said, "I cannot argue with somebody else; 10 other people may have"--

Dr. Anisman: I will come to that. I am not trying to deny that. What I am submitting to you is that a statement that he would have come to another conclusion indicates a belief that the decision was incorrect. That is all I am saying. I am submitting as well that what Mr. Beck was really arguing was not that the question is not susceptible to right and wrong answers, but rather that it is a difficult question of judgement that should be within the protected sphere of administrative judgement. Again, I do not deny that and the Ombudsman does not deny that. What the Ombudsman has concluded is that the judgement, and there was an exercise of judgement, was incorrectly exercised, and I would like to explain the reasons.

Mr. Offer: May I ask a question? You say the judgement was incorrectly exercised. It is not that the judgement was incorrectly exercised, but that in your opinion an improper weight was placed on the factors that led to the judgement. It is not that the judgement was incorrectly exercised, but rather that those who had the decision-making power put a higher weight on one of the factors than you, in your opinion, might have done, and than Mr. Stransman in his opinion might have done. It is not that the exercise of judgement was incorrect. I just want to indicate at the outset that I take issue. That is like saying the Ontario Securities Commission should not have made the decision.

Dr. Anisman: I do not mean to say that at all. What I mean to say is not that the OSC should not have made the decision. What I mean to say is more what you described, that in the light of the factors with respect to the determination of whether a particular investment vehicle is a security or is an investment contract, they were applied in a manner that resulted in an incorrect conclusion. It is not that there should not have been judgement exercised; in the Ombudsman's opinion, yes.

What I would like to do is explain somewhat quickly the reasons for which the Ombudsman came to that conclusion. The first reason that led the Ombudsman to conclude as he did was that Mr. Salter's note indicates the wrong question was asked.

The note is on page 42 in the Ombudsman's report. I focus on this only because Mr. Beck emphasized it so clearly on this question. The note states: "We have reviewed" the mortgage participations. "In my view these mortgage participations are not securities."

I submit that was a conclusion that the mortgage participations were not subject to the act at all. I say that because of the material that follows. I say it, and I will put it aside in a minute because, again, I do not think it is central. The director went on to say that he felt easier with the decision because Argosy is registered as a mortgage broker. Yesterday Mr. Beck, and the day before I, submitted to you that all mortgages are securities, that there is an exemption for mortgages if sold by a registered mortgage broker and that an interest in a mortgage, if it is an investment contract, is not a mortgage within that exemption.

I submit that the director asked the wrong question. The indication he asked the wrong question is that he goes on to take comfort from the fact Argosy is registered. If the question were, "Is this an exempt mortgage?" the question would have been involved in the initial decision. Again, that is not

the major element of the Ombudsman's conclusion about the correctness of the director's decision, but it was a factor. It is clear that because he adverted to the fact that Argosy was registered as a matter of comfort, not as a matter of it not being a security, that he was dealing with the initial question of whether it was a security at all rather than whether it was an exempt security.

Mr. Ashe: If I may get his impression, Mr. Chairman, that was not my impression of the main point that was being made. The main point that was being made, and the reason for the exemption, was that the investments were very specific into a mortgage. If they had been into a pool of mortgages, then they would have been deemed a security. That was my impression of the main point in this whole issue.

Mr. Kerzner: That is why, as Mr. Beck explained, they concluded it was not an investment contract, which would have taken it out of the exemption given to mortgages being sold by registered mortgage brokers.

Dr. Anisman: Yes, that is correct, Mr. Ashe. I was just about to go on and say that Mr. Beck characterized the question other than I have just done. Mr. Beck characterized the question as whether the Argosy mortgage interests, the syndicated interests, were exempt securities rather than whether they were securities at all. He treated the decision of the director not as I have just described it, but as one as to whether what was being sold was a mortgage within the exemption or was an investment contract that would not have been within the exemption and therefore would have required prospectus disclosure.

I think I should deal with that because that question is one that has been susceptible to confusion; Mr. Stransman refers to some. In fairness to the ministry's submissions, that question should be dealt with on its face. The Ombudsman recognized that the proper interpretation of the Securities Act is the one Mr. Beck took yesterday. Nevertheless, the Ombudsman concluded, as well, that there were reasons for determining that the Argosy interests were investment contracts and were not mortgages within that exemption.

Mr. Beck suggested that the commission used a rule of thumb during this period. The Ombudsman's evidence was that the rule of thumb was not developed until later, but Mr. Beck suggested that there was a rule of thumb the commission focused on in making these determinations and that the major element it looked at was whether there was a guarantee to investors, either against loss or for a return of their investment. He focused on the element of the guarantee as the key to the commission's decision-making during that period.

If that analysis is accepted, if that rule of thumb is applied to the material that was before the director in August 1975 when that decision was made, I submit to you that the decision was not made in accordance with that rule of thumb. I submit to you that would make it an incorrect decision.

What I would like to do is draw your attention to some of the supplements to Mr. Stransman's initial volume, which at page--I am sorry; my book does not have the tabs

Mr. Kerzner: Dr. Anisman, not to interrupt you, there was a second important element to the rule of thumb and that was that they were selling interests in a specific mortgage. He had two key factors, not just the absence

of a guarantee but that it was also being sold as an interest in a specific, identified mortgage. Those were two things; not just the guarantee.

Dr. Anisman: Yes, I concede that, Mr. Kerzner. Perhaps I had better put my submissions in a bit more perspective. The Ombudsman agrees with Mr. Beck that there are questions of judgement involved in the determination of what is a security, that a number of factors are brought to bear, and that it is the application of those factors that is relevant to making a determination as to whether something is a security.

I submit that Mr. Beck said the rule of thumb applied by the commission was the element of the guarantee. He said that was the most important single element. He also said that there should be a pooling of interests and that a purchase of a specific interest in a specific mortgage was not generally looked at as a security. Mr. Stransman identified the latter element as the rule of thumb that the commission applied.

All I want to point out here is that with respect to the guarantee element, there was a guarantee evident in the materials that were before the director in 1975.

At page 127 of Mr. Stransman's first volume--

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Mr. Kerzner: Is this the form letter you are taking us to?

Dr. Anisman: Yes, it is. It is the letter sent by the Argosy Group of Canada.

Mr. Kerzner: The numbering is the numbering in your briefing book, 16b, volume 1.

Dr. Anisman: I merely point out that the letter indicates on page 1 that the mortgage will have guarantors and lists seven guarantors, if my counting is correct. It goes further to point out that in addition to personal covenants of the principals, there is additional collateral on the mortgages.

On page 128, in the fifth paragraph from the bottom, it again stresses that in all instances Argosy requires the personal covenants of its principals and their related companies, regardless of how good any product may be.

Mr. Kerzner: That is not a guarantee that the investor is going to be paid. It is only additional security for the mortgage investment, and if the guarantors are insolvent, the investor does not get paid. You get a pretty piece of paper that is a judgement, but you will not get any money.

Dr. Anisman: That is technically correct.

Mr. Kerzner: That is not what they mean by "guarantee" in the security sense that Mr. Beck was putting. That is a guarantee by the issuer, Argosy, that the investor is going to get his money back: "Do not worry what happens to the mortgage for the mortgagors. We, Argosy, will see that you get your money back." Is that not what Mr. Beck was talking about?

Dr. Anisman: I cannot say what Mr. Beck was talking about, but I certainly did not read it that way. I took it to mean, not that there was a guarantee in a technical sense and that they would be absolutely insured to

get their money back, but rather that there was a representation to them that their money was guaranteed and that there was an indication to them of an understanding that they had a secure investment.

In other words, the point of the guarantee element in the analysis of whether there is an investment contract, which is the question we are dealing with, goes to the investor's reliance on the person who is selling him the instrument for that person's expertise and assurance that what he has is a sound investment.

That is the manner in which it has been focused on in the securities cases. What I am suggesting here as well--

Mr. Bellmore: I do not want you to--

Dr. Anisman: Mr. Bellmore, I would prefer that you do not interrupt. I withheld my comments earlier.

Mr. Bellmore: I do not want you to misconstrue Mr. Beck's evidence.

Dr. Anisman: I do not intend to.

Mr. Bellmore: Mr. Beck was not referring to the guarantee by mortgagors.

Mr. Mancini: Mr. Chairman, on a point of order: We are either going to have people who have standing interrupt each other or we are not going to have it.

Mr. Chairman: You are quite right.

Mr. Mancini: I think the Ombudsman's people stood by very quietly. In all fairness, I think we should keep the same practice.

Mr. Chairman: I agree.

Dr. Anisman: The point I am trying to make here is that the evidence in the material before the director was enough to flag what Mr. Beck identified as one of the major components of an investment contract in the materials themselves.

A careful reading of it--in fact, even a cursory reading of it--indicates that there were representations to the investors that this was a very secure investment. It began that the mortgage would have as guarantors the seven individuals and corporations named, and then provided financial statements on those persons rather than on the property itself.

All I am trying to do when I submit that is to show that there was a clear indication in the materials before the director in 1975 that should have flagged the fact that this was, at worst, a close call.

In fact, I submit to this committee that on the merits, on an analysis of the factors, and I would like simply to give a quick analysis of the factors, the Ombudsman was quite justified in concluding that the director's decision that the Argosy syndicated mortgage interests were not securities was an incorrect decision.

What has been mentioned to you already is that the analysis of

investment contract is designed to determine whether people buying vehicles, investment instruments, are purchasing an investment, something that is an investment within the kind of policies the Securities Act is meant to deal with. The criteria that have generally been applied to that under the tests that are mentioned and have been mentioned--in particular the Howey test--are that the investor pays out money in the expectation of making profit from the efforts of others. That is a general standard that is subject to a number of more detailed standards, some of which Mr. Beck suggested yesterday.

I would just like to take you through the factors that existed with the Argosy Investments syndicated mortgage vehicles and indicate the factors that led the Ombudsman to conclude that the director's decision was incorrect, remembering always that the point of the conclusion is to require disclosure to investors under a prospectus and to require registration of the sellers.

Admittedly, the investors purchased or ultimately ended up with a specific interest in a specific mortgage. That alone would not be determinative either way. That indicates that there was a division, that there was a common enterprise, that they clearly expected profit. That alone would not be determinative, although I believe we agreed on Monday that if that alone existed, it would be a reasonable judgement call that a security was not involved or that it was an exempt security, to put it technically correctly.

In this case, what we know is that investors were informed of specific mortgages and paid their money to Argosy, but we also have evidence that they did not always get the mortgage they thought they were buying, that sometimes Argosy put their money into a different mortgage vehicle and they got that mortgage. That, Mr. Beck admitted yesterday, was an indication that they could have an investment contract. That is a relevant factor gravitating towards an investment contract. The fact they did that is clear from the work of Laventhol and Horwath and from Mr. Baskerville's report.

In fact, that is exactly what happened in the Western Ontario Credit Corp. Ltd. decision. The commission, in 1973 and again in 1974, decided in favour of investment contracts, held that investment contracts were being sold. Investors were ultimately given interests in specific mortgages, but what they did not know when they bought was which mortgage they would have. It was a little clearer than here, but what was here is a factor gravitating towards investment contracts.

Mr. Ashe: May I ask a question? Do we have any specific, written evidence that as an investor, you put your money in mortgage A and got back a letter, certificate or whatever that said, "We have stuck you in mortgage C because we do not care if we told you were going to buy in mortgage A and you are stuck with it"?

Interjection: I am one.

Mr. Ashe: I did not ask you at the moment, thank you.

I think we have all bought things under these circumstances. We go in and buy a car and we say we want this, this and this. The next day or the day after, the salesman says, "Gosh, I really do not have the car with this, this and this, but if you are prepared to take this, this and this, we will do it."

I think there is a fine line. I suppose you can argue one way or the other about the bait-and-switch, if you will, versus saying, "We did not know we got switched into that one until some time later." Do we have evidence to

indicate which it was? Either of them is probably according to Hoyle; I do not deny that.

Dr. Anisman: We do have some evidence. The Ombudsman's report, on page 1, refers to the report of Laventhol and Horwath to the effect that funds of investors "had been transferred from one syndicated loan to another without their written authorization or approval." I would have to go back to that to find the specific page.

Mr. Kerzner: But are any of them in the 1975 era? I thought what we have is 1977-78. The commission is looking at this in 1975. So, if they had gone through every darned mortgage and every application, they may well have discovered absolutely no switching. You are not suggesting they should be going back every six months to see if they are doing something that might change it?

Dr. Anisman: No. I will come to that. I do not have any evidence and I do not believe we can show that occurred in 1975. What I am attempting to do is indicate the factors. What one must remember here is that this decision was a decision that governed the regulatory regime of these vehicles not only in 1975 but also from 1975 through 1980.

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Mr. Kerzner: I think we understand the point. But if you are going to criticize the decision that was made in 1975, I do not think you can fairly criticize it, because there was mortgage switching going on in 1975 that should have led them to characterize it as an investment contract.

Dr. Anisman: No. What I am attempting to do now is talk about the factors, and I will relate them back to 1975 subsequently. There is also evidence in the Baskerville report that this occurred.

The other factors focused on by the OSC in the Western Ontario Credit Corp. decision in 1974 had to do with whether the purchasers of the vehicles relied on the expertise of the seller. In this case, I think one can say they relied, certainly over the life, on Argosy to pick the vehicles. Argosy administered them. That was clear in 1975. The investors had no direct right of enforcement with respect to the mortgages. Argosy always had complete control of enforcement of any failures to pay, of any defalcations. That was given exclusively to Argosy.

As well, it is clear that one factor the commission focused on, again with respect to reliance on the expertise of the seller, was the fact that investors would not get separate legal advice. There is a letter in the material that was before the securities commission, which I believe was given to this committee with the commission's file yesterday. It is another letter from Argosy to investors--and I am not sure whether it is in the materials--in which it is stated that Argosy pays all legal costs.

I submit that was a factor that the commission had available to it--it was in its file in 1975--that again indicated that investors were not obtaining separate legal advice. In fact, it was an inducement to them not to do so. If Argosy paid all legal costs, investors were not likely to do so.

I have mentioned the element of the guarantee, which the commission viewed as important, and the indication that if it was not a guarantee in the sense of a legal guarantee with legal security that was registrable, it is

clear that Argosy, in its letters, was indicating there was the equivalent of a guarantee available to investors.

As well, over the years, in the later years certainly, Argosy made a practice of paying interest to investors on a monthly basis, whether or not it obtained the payment under the mortgage, so that too is a factor that goes towards a guarantee. I am not saying it is a guarantee, but it also indicates the investors' understanding and the treatment by Argosy of these vehicles as investment vehicles, not purchases of a specific mortgage.

I am not saying that any one of these factors is determinative. What I am saying is that we have an accumulation of factors here on the basis of which a judgement has to be made.

At the end, Argosy encouraged reinvestment in its literature, which suggests a security and a long-term investment, and it represented that the mortgage interests were assignable, which makes them analogous to a security that is tradable.

Finally--and I believe this was clear in the early years--Argosy was putting the funds into a single bank account, even though the investors believed they were putting their money into a trust.

I submit that on the basis of all those factors, the decision with respect to whether an investment contract existed was pretty clear. Mr. Stransman was prepared to draw it and the Ombudsman would draw it. It met the WOCCO test, which was the test the commission itself had applied in 1974.

I am sorry to have spent so much time on a question that is not the core of the Ombudsman's recommendation, because all this goes only to the Ombudsman's conclusion that the director was wrong in his conclusion--and I submit that even if it was wrong, it is not determinative. The basis for the Ombudsman's conclusion was that the decision was made unreasonably. It was made unreasonably, in the Ombudsman's view, because a proper investigation was not made.

This question came up yesterday as well. What I think we should look at is the material that was before the director at the time the decision was made in 1975. There was an investigator's report of a single interview with the person who had written the letter, Mr. Williamson. There were a number of documents, including the letter I read to you which emphasizes the elements of guarantee, that indicate that this may very well have been an investment contract.

We have been informed that there was a conversation with Mr. Bader and Mr. Gord. No one remembers quite how long it was. Mr. Gord, himself, in his responses to the Ombudsman, did not remember that he had even been involved. He stated that his first involvement in the Argosy matter was in 1978 with respect to the hearing on Mr. Carnie's rehabilitation.

Mr. Beck has told you, quoting my opinion, that the question of whether an investment contract exists involves a refined judgement. It does involve a refined judgement. That is exactly why complete facts are necessary in order to make it properly. It cannot be made on the basis of documents alone. What one has to determine in order to decide whether an investment contract is being sold, whether one is dealing with an exempt security or a security at all, is not only what the documents say but also how it is sold, how it is treated in practice by the seller and what the investors understand when they buy it.

I could quote decisions, but I will quote only one with respect to that. In fact, let me quote to you what the commission itself said with regard to Western Ontario Credit. An argument had been made to it that the actual language of the documents was what should govern. The commission said:

"It is not the actual language of the documents, but the substance of the transaction which is most relevant to our present purpose. This approach of looking to the package of documents and the totality in substance of the transaction to determine the essential nature of the arrangement between an issuer and a purchaser, and the economic reality of that bargain, is consistent with the usual canons of interpretation applicable to securities legislation, both in Canada and the United States."

The Court of Appeal of Ontario, in the Pacific Coast Coin Exchange decision, reiterated the point by emphasizing that the commodity account agreement, which has been mentioned to you, could not be looked at alone but had to be viewed "in the circumstances in which it was entered into, and being dealt with by the appellants." The question then was whether those circumstances and the manner in which the seller treated it rendered it an investment contract.

Again, in response to an argument by counsel made on the documents, Mr. Justice Dubin said:

"Mr. Laidlaw submitted that in determining the issue as to whether the contract constituted an investment contract, the issue must be resolved by consideration of the terms of the contract itself, without regard to any of the other circumstances surrounding the transaction. However, I think"--and this is Mr. Justice Dubin rejecting that argument--"it has been clearly established that in matters such as these, the substance of the transaction is what governs, and not merely its form."

That decision I just read from was a decision that was handed down in July 1975, about a month and a half before the director's decision. As you have been told, Mr. Bader was counsel on it. It was clear from the commission's decisions and the court's decisions at that time that one had to look at all the available facts to determine what a security was or whether an instrument was an investment contract.

In this case, there was no further investigation than looking at the documents. That has become clear. There was no attempt to look at the banking practices of Argosy. There was no attempt to look at whether there was bait and switching--and I do not know whether there was in 1975--and they did not talk to investors. Mr. Kerzner asked Mr. Beck that very question yesterday and Mr. Beck responded, no, they had not talked to investors because there were no complaints. In 1975, admittedly there were no complaints, but one does not know what they would have heard had they talked.

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In 1977, there was a complaint, and the complainant submitted new documentation which was different from the earlier documentation, and apparently there was no follow-up to that. Again, this is within Mr. Stransman's overall conclusion of reasonableness, but with respect to that specific complaint, he says on page 103 of the first report that it was given insufficient attention.

In short, the investigation that was not made would have enabled the

commission to make a decision with full facts, to exercise its judgement in the light of the full facts. In view of the decision of the Court of Appeal in the Pacific Coast Coin Exchange case and the OSC's decision in WOCCO a year earlier, the failure to seek these facts in order to enable the commission to make the proper judgement was what the Ombudsman concluded was unreasonable. That is the crux of that element of the issue, and in the Ombudsman's submission, it prevented the proper exercise of judgement on that matter.

I notice it is 12:30, and I think I can finish off the last element of investment contracts in about five minutes, if you will allow me to.

Mr. Chairman: Yes, sure, if you mean five minutes.

Dr. Anisman: The third element of regulatory failure involved in the treatment of syndicated mortgages had nothing to do with the director's actual exercise of judgement or his failure to seek facts with respect to the treatment of the investment vehicle. Rather it had to do with the failure of the registrar of mortgage brokers to communicate information known by him to the commission, even though, admittedly on different facts, he had received an earlier recommendation to do so. It also had to do with the commission's failure to consider whether the registrar of mortgage brokers was actually doing a proper job with respect to the regulation of Argosy or whether he had misgivings.

Mr. Shymko asked Mr. Beck this very question yesterday. He asked about the registrar's failure to send information to the commission with respect to the conduct of Argosy and his misgivings about Mr. Carnie. Mr. Beck responded that the information about Carnie's activities would not have made much difference with respect to whether there was a security involved. Mr. Salter echoed that response somewhat later by saying that the information the registrar had would not have had any bearing on whether the Argosy syndicated mortgage interests were investment contracts.

I submit to you, though, that information would have been very important to the director at that time had he known it. Had he had that information from the registrar, he might very well have investigated further. He might have conducted the investigation that the Ombudsman says he unreasonably failed to do in order to find out what was really going on with Argosy. How were these investments being sold? What did investors understand they were getting? That is the first element that it might have had.

The second fact--and I think this is important because Mr. Salter's response to Mr. Kerzner's question was quite precise--what he actually said, and I am giving you a fuller rendition of it this time, was, "That information might have weighed with us but it would not have had any bearing on whether it was an investment contract."

What I would like to do in about two minutes is describe to you the manner in which I believe it might have weighed with him. As you have been told, the issue of whether an investment contract was involved or whether a mortgage was involved goes to the exemption available from registration and from the prospectus requirements. If it was an investment contract, there was no exemption. If it was a mortgage, given that Carnie was registered as a mortgage broker, it was exempt and the commission would not regulate it under the Securities Act.

The first failure went to the investigation, and that goes to whether it was an investment contract, but the commission has an additional power with

respect to exemptions under the act. It has it now and it had it in 1975. If you would like sections, I am prepared to give them to you. Now it is section 124 of the current act, and in 1975, it was subsection 19(5) of the Securities Act.

That power is a power given to the commission to deny exemptions. In other words, where a particular person trades in securities pursuant to an exemption in a manner the commission considers is abusive or unfair to investors or an improper exploitation of the capital markets, the commission can hold a hearing and deny the exemption to that person.

I submit to you that is the manner in which the information would have weighed with Mr. Salter, had he concluded, after a proper investigation, if it had been made, that there was no investment contract. He might very well then have investigated to determine whether Mr. Carnie should have been denied that exemption.

The failure of the registrar of mortgage brokers to provide the OSC with the information he had about Carnie's character and business practices went to Mr. Carnie's integrity and, in effect, the failure prevented Mr. Salter from taking the investigative steps that were required to determine whether a security was being sold or an investment contract, at least, was being sold and whether the exemption should be denied.

In both cases, I submit to you that it prevented him from properly exercising his judgement with respect to those issues. That was the second basis on which the Ombudsman concluded that there was regulatory failure with respect to the treatment of the syndicated mortgages.

In summation, the first is the unreasonableness of the director's failure to take investigative steps to get all the facts so that he could make a proper judgement; the second is the failure of the registrar of mortgage brokers to provide information that might have led him--would likely have led him--to make that investigation with respect to one of two ways of dealing with Mr. Carnie. In both cases, he was prevented from exercising his proper judgement, and in both cases, I submit to you, that is clearly beyond the standard in the Ombudsman Act and was unreasonable conduct.

With that, I have gone over what I promised by about two minutes. I apologize for that and I will close my submission on syndicated mortgage interest.

Mr. Chairman: The committee will now recess and return at 2 p.m.

Mr. Philip: May I make a suggestion? Since we are on a roll on this and some people may have to return to their ridings at some distance, in the rain and with traffic, could we not just have a sandwich break and resume at one o'clock?

Interjection.

Mr. Philip: The majority of the members could.

Mr. Chairman: If the committee is in favour of that, it is quite all right.

Mr. Hennessy: Will you buy me a sandwich?

Mr. Philip: If you will vote for it, I will buy you a sandwich.

Mr. Chairman: We will return at one o'clock.

The committee recessed at 12:38 p.m.

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STANDING COMMITTEE ON THE OMBUDSMAN
ARGOSY FINANCIAL GROUP OF CANADA LTD.
THURSDAY, APRIL 16, 1987
Afternoon Sitting

STANDING COMMITTEE ON THE OMBUDSMAN

CHAIRMAN: McNeil, R. K. (Elgin PC)

VICE-CHAIRMAN: Sheppard, H. N. (Northumberland PC)

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McLean, A. K. (Simcoe East PC)

Morin, G. E., (Carleton East L)

Newman, B. (Windsor-Walkerville L)

Philip, E. T. (Etobicoke NDP)

Shymko, Y. R. (High Park-Swansea PC)

Substitutions:

Ashe, G. L. (Durham West PC) for Mr. Sheppard

Offer, S. (Mississauga North L) for Mr. Morin

Clerk: Decker, T.

Staff:

Kerzner, T., Legal Counsel; with Perry, Farley and Onyschuk

Evans, C. A., Research Officer, Legislative Research Service

Witnesses:

From the Office of the Ombudsman:

Anisman, Dr. P., Legal Counsel; with Goodman and Carr

Hill, Dr. D. G., Ombudsman

Morrison, G., Director, Investigations

LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON THE OMBUDSMAN

Thursday, April 16, 1987

The committee resumed at 1:09 p.m. in room 151.

ARGOSY FINANCIAL GROUP OF CANADA LTD.
(continued)

Mr. Chairman: Ladies and gentlemen, since there is a quorum, we will resume our hearings. Dr. Anisman, I think you were in the middle.

Dr. Anisman: At the break, I had completed my summary of the basis for the Ombudsman's conclusion that the director's failure to investigate to determine whether the syndicated mortgage interests being sold by Argosy were investment contracts not subject to the exemption in the act was regulatory failure, and for his conclusion that regulatory failure was involved in the failure to transmit information to the Ontario Securities Commission and, on the part of the OSC, to obtain information that would have led it to make that investigation and also to consider the denial of the exemption available for the sale of mortgages.

The next matter I would like to address, and I think I can do it relatively succinctly, is the question of the issuance of a receipt by the securities commission for the prospectus covering Argosy's series I debentures. The major basis for the Ombudsman's conclusion that regulatory failure was involved in the clearance of that prospectus relates to the hearing held with respect to Mr. Carnie's suitability as a control person of a securities issuer applying for registration and as a control person of a company selling its securities to the public.

I think it is already clear to this committee that there was no information in the possession of the commission and its staff at the time of that hearing with respect to Mr. Carnie's activities and practices under the Mortgage Brokers Act. In other words, the registrar of mortgage brokers had not transmitted that information to the OSC, and more important in this case, the staff of the securities commission did not seek to find out what Mr. Carnie's activities had been as a registrant under the Mortgage Brokers Act. In other words, they did not consult with the registrar of mortgage brokers to determine information that would have been relevant to the commission's decision.

As you recall, the commission's decision with respect to Mr. Carnie related to whether enough time had passed since his conviction and whether he had conducted himself with sufficient propriety since that time to have been viewed as having rehabilitated himself, so that he could overcome the blotch on his record relating to a conviction for theft by conversion.

Mr. Beck admitted yesterday that information should have been available to the commission. I believe he said: "It should have been available. They should have had that." Mr. Stransman, in his report, said the staff was in error and failed to get that information and should have. He concluded that he believed it was regulatory failure. That is on page 30 of volume 2 of Mr. Stransman's work, as numbered in the materials handed out to the committee.

Mr. Beck did not say that it probably would have led the commission to a different result, but as a result of Mr. Kerzner's questioning, he did admit that, had that information been available to the commission at the time it decided on Mr. Carnie's character, it would have significantly influenced the decision. I believe "significantly influenced" are the words he used. In fact, it must have influenced them. The issue before the commission had to do with Mr. Carnie's rehabilitation. The question was whether his past dishonesty had been erased because of proper conduct, because of honest conduct in the years since 1971.

Had the commission known that he ignored the Commercial Registration Appeal Tribunal decision--at least, the consent order, the agreement attached to it--had the commission known about his blanket mortgage practices, that might very well have, and I submit would have, influenced its conclusion about his rehabilitation. I do not think it is relevant to say the blanket mortgage practices dealt with borrowers. They did deal with borrowers, not investors; there is no question about that.

What they indicated was that Mr. Carnie was prepared to engage in conduct with respect to borrowers that the registrar of mortgage brokers viewed as unconscionable, conduct that might very well have brought into question his rehabilitation, his character. It was his character that was in issue before the commission; it was not whether borrowers or investors were the subject of his activity.

I point out as well, that in the course of his application Mr. Carnie apparently was asked, and so the Ombudsman's staff was informed, whether there had been any administrative procedures ever taken against him. His response to that was no. I will immediately admit that the CRAT hearing was technically not against Mr. Carnie personally--it was against Argosy--but it is clear that his activities were the subject of much of that hearing.

I submit that had the commission known of the CRAT hearing and of that answer, it would have viewed that as a matter going very seriously to Mr. Carnie's integrity. They would have likely concluded that he had not demonstrated sufficient rehabilitation to warrant registration as a securities issuer and to warrant the issue of debentures to the public by a company that was controlled by him.

I merely remind the committee that had that decision gone the other way, none of the ensuing loss would have been suffered by investors. There would not have been clearance of the series I debenture prospectus, there would not have been a second series prospectus and there would not have been the sale of the registered retirement savings plans. Again, I submit that the failure on the part of the commission has virtually been admitted by Mr. Stransman, and by Mr. Beck yesterday on the basis of his evidence, his testimony that I quoted, that it was regulatory failure.

I hasten to add that I do not think he would agree with that conclusion, but I submit that the facts before this committee demonstrate that the failure on the part of the commission staff to ask the registrar of mortgage brokers what he knew about Carnie, in his supervision of Carnie's activities as a mortgage broker, was regulatory failure that would have resulted in another set of events. We would not have had the loss to investors that has been described.

With respect to the prospectus for the second series of debentures, this is a matter to which the ministry has directed much of its attention, not only

at this hearing but also during the processing of the prospectus itself. There is no question that the second series debenture prospectus received serious, thoughtful attention from the staff of the securities commission. There is no question that they found, they elicited, they enunciated a large number of deficiencies with respect to it.

The review of that prospectus lasted over a year. The commission staff reviewed it intensively, and the Ombudsman fully accepts what the ministry has submitted, that it may very well be the most intensive scrutiny of a prospectus ever conducted by the OSC. In the light of that fact, it is quite remarkable that it got through, and it got through without disclosing the true position of Argosy in October 1979.

Mr. Beck has characterized the Ombudsman's conclusions with respect to that prospectus as being, once again, merely an attempt to second-guess the judgement of the staff of the commission and as being merely a matter of judgement. He said that what the Ombudsman has said is that the commission was wrong in applying section 60 of the Securities Act. I advert to a section of the Securities Act because I think I should explain to you what section 60 of the Securities Act is really all about. That goes to a matter that was raised this morning with respect to the jurisdiction and obligations of the OSC when reviewing prospectuses.

Section 60 of the act is the section under which the director of OSC is authorized to issue or deny a receipt for a prospectus. I will deal only with two subsections. The first subsection says quite clearly that the director is required to issue a receipt for a prospectus "unless it appears to him that it is not in the public interest to do so."

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Mr. Philip: Are you quoting from the new act or the old act?

Dr. Anisman: I am sorry, Mr. Philip. I am quoting from the new act, subsection 60(1). It says, "Subject to subsection (2) of this section and subsection 62(4)"--which is not relevant for present purposes--"the director shall issue a receipt for a prospectus filed under this part unless it appears to him that it is not in the public interest to do so."

In other words, that section says that the director must issue a prospectus unless he believes that the public interest requires otherwise. It gives him a discretion not to issue a prospectus where he thinks it is in the public interest not to issue it. In fact, it is no different in substance from the old act.

The old act said that the director may issue a receipt for a prospectus unless a number of circumstances existed. The "may" in the first part gave him the same discretion as most securities lawyers read that section. Indeed, I do not know of any who read it otherwise, although I will come back to address the question raised this morning.

The "unless" part of that which deprived the director of discretion in the old act is now in subsection 60(2) of the current act. What you have is subsection (1), which says a director shall issue a receipt unless he thinks it is in the public interest not to. Subsection (2) then goes on to provide instances where he is not entitled to issue a receipt. It says that the director shall not issue a receipt for a prospectus if it appears to him that the prospectus or any document filed within it does not comply with the act, contains a misrepresentation or is misleading.

That is the first of eight subsections indicating circumstances in which the director cannot issue a prospectus and the one that deals with the question of full disclosure. Under the act, an issuer is required to make full, true and plain disclosure of all material facts relating to the issuer. All material facts means all facts relevant to an investor's decision-making about a purchase of the security, to make full disclosure of all that information.

In the event that full disclosure is not made, and the director discovers it, the director is obligated to refuse to issue a receipt for that prospectus. But that is not the whole of it. The director has a residual discretion under subsection 1 not to issue a receipt where he believes it to be in the public interest not to do so. Then there is another series of clauses in subsection 2 which indicate where he cannot.

He cannot where he believes an unconscionable consideration has been paid or given or is intended to be paid for certain purposes. He cannot where he thinks the proceeds from the sale of the securities, together with the issuer's resources, are insufficient to accomplish the purpose of the issue stated in the prospectus. There are a number of others. One of them is if he thinks that the past conduct of an officer disentitles him. That is the section under which the director, with respect to the series I prospectus, decided not to issue a receipt for a prospectus.

I am going through this because I am trying to say that the director is not limited in his review of prospectuses merely to discovering whether the prospectus contains full disclosure. The director is required to do that. That is one of his obligations under the act in reviewing prospectuses, but there are other obligations.

It is also fair to say--you have my opinion and I said it in there--that it is not expected that the commission will be aggressive in exercising its discretionary powers to refuse receipts. It will exercise those powers gingerly and it will not attempt to impede legitimate issuers from raising capital. But it is empowered to do it, and it has exercised its discretion to refuse to issue a receipt for a prospectus or to require the issuer to reallocate the risk involved.

I did not bring decisions to present to you because I did not think we would have to get into this issue today, to be honest. It came up this morning, but there is a Shoppers' Investments decision which may be referred to in some of the materials, in which the commission refused to issue a receipt for a prospectus unless the company changed the risk allocation relating to the mortgages in which it invested, and would invest only in mortgages with a certain security. If it did not invest in mortgages with a certain security and up to no greater than certain levels of the value of the property, the commission would have simply refused to allow it to sell its debentures to the public. So that residual discretion does exist.

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Having said that, I can say that the Ombudsman's conclusion is not based on an attempt to second-guess the exercise of judgement as to the application of the standards in section 60. It is made in recognition that they do exist and that the commission had the powers to use them. The Ombudsman's conclusion is based on the fact that, once again, no investigation was made to find out the true facts about Argosy.

Here is what you have. You have a prospectus that was the most intensively reviewed prospectus ever to come before the securities commission. The two staff persons reviewing it found numerous deficiencies. The commission says there were more than 100. They reviewed it for a year and at the end of that time they signed off, but they signed off in circumstances where they had not been satisfied that the prospectus should go through. They signed off in circumstances after which they asked the auditors for comfort with respect to the doubtful accounts, and they got a certain comfort from the auditors, but it was not the one they had asked for. What they had asked for was assurance that the treatment of doubtful accounts was fair. I believe that was the word they used in their letter.

The auditors responded, not with an answer to that question, but with the answer that they had responded with before, in somewhat more detail. They said: "We have not done an audit of the financial statements subsequent to 1978. We cannot state an opinion on the fairness of the doubtful accounts." They did not say that, but that is what it amounted to. They said: "Here are our normal procedures when we review unaudited financial statements. We check what they say. We compare them with past financial statements. We talk to management and we ask questions. We do investigations to satisfy ourselves," but those kinds of investigations are discussions with management. Those were what they described.

They then went on to reiterate what they would do if they had done an audit, but what they had not done. The staff must have known that a review of that type, a comfort letter, is not based on an attempt to discern the true facts, but it is based on a review of the financial statements to seek out anomalies. Then there is a request to management or there are discussions with management for explanations of them, but the people they ask were the very people whom the commission suspected.

Mr. Offer: With respect to the comfort letter, what period of time was that for? Was it not just for four months?

Dr. Anisman: Yes.

Mr. Offer: Was that not just for four months because there had just been a full and complete audit made for the previous 12 months?

Dr. Anisman: Yes.

Mr. Offer: What they wanted to do was to bridge that time period without having to require--

Dr. Anisman: Yes, they did.

Mr. Offer: In fact, that is something that is done in the normal course.

Dr. Anisman: Yes, it is.

Mr. Offer: I believe it was the auditor, who had a long history with the company, who was bridging that small period of time to see whether there was anything that he might bring to it. The way that you brought it out was as if they would just say, "We will just take this comfort letter and forget it," when, in fact, it was just for the four-month period of time, as I recall, and it had been preceded by a full, complete and extensive audit for the 12-month period. It is something that is done in the very usual and normal course of business and that is relied upon, very much so.

Dr. Anisman: Yes.

Mr. Offer: I just wanted to get an idea. I did not think it was being brought out in that light.

Dr. Anisman: No, and it is not, and I will explain why. Comfort letters are common practice. Comfort letters could be given for periods of up to nine months. What they do is that they cover the period during which the financial statements are unaudited in a prospectus, and the financial statements are only audited annually.

In this case the period was four months, but the fact is and the reason I emphasize it in the manner I do is not that I think there is a problem with the practice of comfort letters. I think it is quite reasonable in most circumstances for the commission to follow its normal practice and rely on comfort letters received from auditors, but in the current circumstances the staff thought that Argosy was a company in trouble. They have been quoted as saying that. They asked for comfort on a specific matter, the allowance for doubtful debts that covered that four-month period. They did not get that comfort. They knew the question they asked. They were trained accountants and they knew what the auditors had done. They knew what they were asking. They had a comfort letter before they asked.

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Mr. Offer: Sorry. My concern was that you were taking a look at the comfort letter and saying, "This is it, as a snapshot of the time," and really ignoring the fact that, for the 12 months prior to that four months, there had been an extremely expensive, intense and exhaustive review of the company. I did not think that was somewhat fair, to--

Dr. Anisman: There had been an audit. I do not intend to be unfair. I was attempting to focus on the fact that the staff itself was not satisfied, asked for comfort and did not get it. I focus on that because I think it is important to see what they did when they did get the comfort letter.

I think also when one mentions that it is only four months, it is necessary to remember that the comfort letter was sent to them not on April 30. It spoke as of April 30. The one we are talking about, which is the second comfort letter, is dated November 6, 1979. There was clearly no comfort being given for the six or seven months subsequent to April 30. It is in a context where the staff is suspicious of this company. They believe it is a company in trouble. They ask for comfort up to April 30. They get a traditional comfort letter, albeit for a limited period after the time, and they do not exercise any investigative powers.

Mr. McLean: Which staff?

Dr. Anisman: The OSC staff. This is in 1979.

Perhaps at this point I should say what they did. What they did do was, they signed off on the prospectus. In fact, that is what the ministry relies on for saying they exercised their judgement, but they signed off on the prospectus in circumstances where they led the Ombudsman's staff to believe that they thought Argosy should not go ahead. They signed off on the prospectus and then wrote notes on it.

I would like to take you to those notes which are in the material

submitted by the ministry, at tab A-1 in their first book, on page 39. On page 39 there is a memorandum to the file from the prospectus accountant who reviewed the prospectus. What he says in conclusion, he admits there are "subjective factors" and says, "Without doing an audit and satisfying myself with respect to the policy and adequacy of the allowance, I have relied on the professional expertise of Thorne Riddell and Co."

He then goes on to say, "I have questioned both these issues and although I have personal reservations about these problem areas I have signed off this docket on the grounds that Thorne Riddell has given a clean audit report, a comfort letter and senior management has also given us a letter that there have been no material changes."

He says he relies on the auditors, but he sends this memo to file.

The lawyer working on the file writes a handwritten note to the file. It is on page 41 of the same material. Among other things he says, "Argosy reports mortgages in default as part of"--and it is not clear to me on here--"current assets on grounds that being in default--"

Interjection.

Dr. Anisman: Thank you. I have just received a bit of useful help. It is quoted in the Ombudsman's report on page 70:

"'Argosy reports mortgages in default as part of current assets on ground that being in default the sums are due immediately.

"'Argosy is reporting (accruing) unpaid interest on defaulted mortgages as revenue...without this accrual, the company would report no profit or a loss.

"'Both matters may raise questions as to whether there has been compliance with'"--generally accepted accounting principles--"'GAAP, or as to fairness.

"'On signing off this file, I make no representation as to satisfaction with respect to GAAP or fairness matters.'"

Now in fairness to him, those were accounting matters. I believe he did say that he relied on the accountant who was reviewing the prospectus.

In interviewing these people, the Ombudsman clearly came away with the conclusion that they believed this prospectus should not have had a receipt issued. As I understand it, their putting these memos on the file is extraordinary. It is almost never done. In fact, in response--and I apologize for this; I just reread it last night--I would like to read from a letter from another member of the staff. This is a letter that I am not sure has been submitted to the committee--and I would be happy to provide copies--which was sent to the Ombudsman by Mr. Gord, dated August 12, 1986.

Mr. Bellmore: Excuse me, may I have a copy of that? We have not been provided with a copy.

Dr. Anisman: I will be happy to provide you with a copy of it.

Mr. Philip: On a point of order, I hope you will understand that I believe we have to be consistent with all people. At one point earlier in the

proceedings, I suggested to the other side that I thought it was inappropriate for new information to be admitted. I have the same concern when your side does it.

Dr. Anisman: That is a fair comment. I was not attempting to provide much new information. I have just seen letters presented to the committee over the past few days, which I assumed we could do.

Mr. Philip: I recognize that it has been done for the other side and therefore I am not demanding that it has to be stopped for you, but I did not want it to go unnoticed.

Dr. Anisman: I apologize for that. I wanted to read it to you rather than to say in my quote--and I will quote it now that you have permitted it. What I wanted to say was that Mr. Gord attempts to explain to the Ombudsman why these staff members put those submissions on the file. In doing so, he provides an explanation. I will quote what I think are the two relevant sentences. I think they indicate the import of those memos to the file by the two members of the Ontario Securities Commission staff who were reviewing the series II prospectus.

What he said was: "Staff members write notes or memos on file covers only rarely and only in circumstances where they have no other means to protect themselves in case of a possible future blowup. It is patently obvious to me that they did so in the case of Argosy because they objected to the issuance of a receipt." Mr. Gord's view of those memos corresponds to the information the Ombudsman's staff obtained.

When I say that, again, this is not an attempt on the part of the Ombudsman to second-guess the judgement. What it is doing is indicating that the very staff members who reviewed it really did not think the prospectus should be cleared.

What that leads to is the question of what else they might have done. Again, I would like to refer to the Securities Act. The question of the investigative powers of the securities commission has come up before during this committee's proceedings. I would merely like to address your attention to subsection 11(2) of the Securities Act, the current one. Section 11 contains the commission's investigative powers and subsection 2 deals with the commission's powers of investigation at its own initiative. It says, "The commission may...appoint any person to make such investigation as it considers expedient for the due administration of this act or into any matter relating to trading in securities...."

In other words, the commission had the power to investigate with respect to the truth about this prospectus and Argosy at the end of 1979, 10 and a half months after the audited financial statements had been completed. That power was not exercised; that power was not requested. Admittedly, in most circumstances the commission does not issue an investigation order when reviewing a prospectus. In most circumstances, the staff assumes, and legitimately so, the accuracy of statements made in a prospectus submitted to it. They would not check to see whether someone who said he was registered as a mortgage broker was registered, and they should not have to. But in circumstances like Argosy, where the staff believed there was a problem and intensively reviewed that prospectus and still believed there was a problem, it did not seek an investigation order, and it should have. In other words, there was no attempt, once again, to find out the full facts that would have enabled them to make their decision.

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I would merely like to direct your attention very quickly to what they might have found had they conducted an investigation. Again, in the material submitted by the ministry, you have the report prepared by Mr. Baskerville. I believe it is the last tab in the second book. Mr. Baskerville gave evidence before the committee.

If one looks at that report--and it was made after the collapse--what it says is that in 1979, at the time when the staff would have conducted and could have conducted an investigation, Argosy had shown a negative cash flow in virtually every month after July 1978. Argosy was in a deficit position. Had certain proper accounting reporting been done--I am not saying there was any impropriety on the part of anyone here; I am simply saying that had the staff investigated and discovered the information Mr. Baskerville subsequently discovered, they would have found that Argosy was in a deficit position at the time they cleared that prospectus.

I would submit to this committee that had they known that Argosy was in a deficit position then, they would have been justified in refusing to issue a receipt for the prospectus and they likely would have refused to issue that receipt at that time.

In other words and in conclusion, with respect to this element of regulatory failure, the Ombudsman's conclusion is once again not based on an attempt to second-guess the staff; it is based on their failure to take steps available to them to find full information that would have indicated whether their beliefs were true. That, I submit to you, is regulatory failure beyond any reasonable exercise of judgement.

Finally, that brings me to the registered retirement savings plans. I have very little to say about the RRSPs. When he addressed you with respect to the RRSPs yesterday, Mr. Beck treated the Ombudsman's criticisms as being directed at the staff. In fact, they were not directed at the staff; they were directed at the commission itself. The commission granted the exemption to Argosy that enabled it to sell its RRSPs in 1979. They did it despite recommendations of the staff that would have required the imposition of conditions on Argosy. They did it without imposing the staff's conditions on Argosy.

What the staff recommended was that the commission require a prospectus after March 1, 1979, and that the funds obtained by Argosy during the interim period, during the period of the exemption, during the high season for RRSPs as it has been called, be held in escrow and that investors be given an opportunity to rescind, to back out, after they had an opportunity to read the prospectus.

The commission did not make any of those orders. The commission did not require an escrow, it did not require a prospectus and it did not require that the staff follow up to see if Argosy continued to sell RRSPs after the expiry of the exemption period. In fact, Argosy did continue and the staff did not follow up. It is the commission's failure to impose those conditions and to require the staff to follow up and the failure of the staff to take the initiative to do so that constitute the regulatory failure on the part of the commission with respect to the RRSPs, in the view of the Ombudsman.

At this point, I would like to address only one issue. I realize time is running, and I do it because, as I understood it, this is to be the last

submission to this committee and I would like to clear up one matter of the Securities Act that was raised this morning. That has to do with the likelihood that people who purchased debentures read the prospectus.

There is a substantial amount of literature relating to securities law and prospectuses that indicates that, with respect to investor education at least, especially unsophisticated investors, the investors the commission is designed to protect most, the prospectus is a hollow document because investors do not read it. There have been books and articles written to that effect. In fact, the draftsmen of securities legislation are not naïve enough to believe to the contrary. As Mr. Bellmore said this morning, the purpose of the prospectus is to ensure that full disclosure is made to someone. The staff is there to vet it for that purpose and then analysts can read it and presumably professionals will read it.

It is also there to ensure that people who sell shares to the public are at risk because there is significant potential civil liability imposed on them if it contains a misrepresentation. However, very few people really believe that unsophisticated investors read them, and in fact the Securities Act is designed in a manner that does not assume that they do. What it provides is not that a prospectus has to be delivered to investors before they buy but that it has to be delivered to investors after they buy. After they get it, they are entitled to have a two-day period to back out, as it were.

The problem with this--I may be falling back on my academic past; I will try not to do that--is that the Securities Act also provides that if an agent of an investor, in other words, the investor's broker, has the prospectus, the investor is deemed to have had it as of the date the broker had it. If my broker had the prospectus a week ago and I buy tomorrow, I have no rescission period. I may never get the prospectus, although if my broker is part of the selling group, he will send it to me.

I say that only to address the question of what unsophisticated investors will be likely to have read. It is not clear that they would have read the prospectus. If they had, one cannot know whether they would have looked for or understood the section on risk. It is clear that the staff did not require, as they very well could have, that the prospectus be labelled speculative on the front page with a cross-reference to the risk section. Again, I say that merely to draw the committee's attention to the realities of prospectus delivery.

If the committee will allow me, I will attempt to sum up in about the next minute.

The Ombudsman has based his recommendations on a standard of reasonableness. It is a standard that reflects a number of elements that pervade all the aspects the Ombudsman has concluded constituted regulatory failure.

In each case, or at least in all of them, some of the two major elements are present. There was a failure to seek and obtain facts that were relevant to the exercise of judgement being made by the commission and its staff with respect to the syndicated mortgages and the determination as to whether they were securities or exempt securities, as the committee will have it. There was a similar kind of failure to obtain evidence to invoke the investigatory powers of the commission under the act with respect to the series II debenture prospectus.

The failure was not a failure of judgement applied to a standard in the act within the staff ambit of judgement. It was an unreasonable failure because it was a failure to seek out the facts that were necessary to the making of an informed judgement by the staff, the kind of judgement, incidentally, that the Securities Act is there to permit investors themselves to make when they buy a security.

The second type of failure that the Ombudsman has concluded was a regulatory failure and that pervades this case was the failure to communicate between agencies of the government. The Ontario Securities Commission did not consult the registrar of mortgage brokers at virtually any time in Argosy's life to find out what information the registrar had, even though in a number of circumstances that information was relevant to the issue before it. The registrar did not pass on the information he had to the securities commission, and similarly, did not look at the securities commission's files. Furthermore, there were no systems in place between them to ensure that information would be provided and available to them even if the staff of each did not go and look for it.

This regulatory failure was relevant, once again, to the determination whether the syndicated mortgages were securities or whether they were exempt securities, and it was relevant with respect to Mr. Carnie's character, with respect to his rehabilitation in 1978. In the Ombudsman's view of both types of regulatory failure, they would have led to another result, and had they not occurred, would have prevented or at least put the commission in a position to prevent the losses that occurred to the Argosy investors. Those failures did occur and the losses occurred.

The standard, which is where I started and which I think is the difficult decision, is not a standard that involves second-guessing judgements of the commission. I submit to you that it is a standard that is well understood with respect to the exercise of judgement and the permissible room for judgement, and it is a standard of unreasonableness that on these facts is quite clear.

I thank the committee for its indulgence.

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Dr. Hill: Mr. Chairman, I assure you I have only a 90-second concluding comment. You can time me.

I have listened of course with great care to the responses put forward by the government to the matters raised by my special report in the Argosy matter. I have noted that some of these responses raised were not brought to my attention following my preliminary and tentative report to the governmental organizations involved. This causes me concern.

I realize that the information that has been brought to the committee's attention has been necessary for it to give full and careful consideration to my report. I must once again, and I said this earlier, express my great concern for my process. I believe that the Ombudsman process, including its investigative procedures and reports is one that has been carefully set out in my legislation. I am concerned if a governmental organization can ignore that process. In my experience as Ombudsman, I have often had occasion to comment on the excellence of our governmental organizations and the dedication of the civil service. I have no hesitation whatever in stating that, on the whole, the Ontario Securities Commission and the registrar of mortgage brokers serve

the public well. Such a general conclusion, however, cannot allow me to shirk what I see is my duty in this particular case: to point out the specific concerns I had with the regulation of Argosy.

Although many technical and legal arguments have been raised before you, I have not been shaken in my belief that my special report on this matter accurately sums up the situation. Mr. Carnie was a crook. The fox was allowed to get into the chicken coop and Carnie's continued ability to operate as a provincially licensed financial expert was unreasonable. Those who were taken in by him as a result of the government's regulatory failures deserve compensation.

I have given you my recommendations in this respect and I hope you will agree with them. In the result, I ask the committee to accept my recommendation for compensation to the victims of the Argosy fiasco. I remain of the view that government must accept some responsibility for this tragedy. Thank you. I wish you and the members of this committee a most pleasant Easter break.

Mr. Kerzner: The committee will be happy to hear that I do not have very many questions. Ms. Morrison made a comment that the information filed in annual reports by Argosy Finance, as a finance company with the securities commission, would have been readily available to the registrar of mortgage brokers for him to ascertain just what Carnie's involvement might have been in the parent. Do you actually have copies of those returns and do they in fact show John David Carnie as being involved during the relevant years? I ask you that because what we do have is the public records from the corporate branch of the ministry, and John David Carnie is not shown as an officer or director of Argosy Finance for the returns 1972 through 1976. He does not show up until the 1977 return. If you have the finance company filings, I think they would be of use to the committee.

Ms. Morrison: I do have them for all those years. I have not looked at absolutely every one but certainly the 1970--which one is that?

Interjection.

Ms. Morrison: I have 1970, 1971 and 1972; all of them show "John David Carnie."

Mr. Kerzner: Interestingly enough, the corporate records do not disclose the 1970 and 1971 companies branch filings. The earliest filing that we have been able to get off the microfiche is the January 1972 filing. Do you not have the finance company filings after, let us say, 1972?

Ms. Morrison: Yes.

Mr. Kerzner: Because those are of even greater--

Ms. Morrison: I have the whole file of annual reports of finance company--

Mr. Kerzner: I wonder whether you could give them to the clerk of the committee because I think they would be of assistance.

Ms. Morrison: I can.

Mr. Kerzner: Can I have just two seconds to see what you have given us?

He is not shown as an officer or director. But you are quite correct; there is then a list of shareholders and that information does not ever appear in the companies branch. I think this would be of some help. I want to give you your file back. Can you arrange to give the committee a photocopy of the 1972 through 1977 finance company returns?

Ms. Morrison: Certainly.

Mr. Kerzner: Dr. Anisman, I want to make sure I follow this. What is the information that you say should have been obtained in 1975 by the securities commission that it did not get and therefore did not have available to make an informed judgement on the securities issue?

If we can start first with the mortgage switching, Mr. Beck acknowledged that it would certainly be a factor that would affect the decision, but the financial information in the prospectus that has been filed shows that as of December 31, 1975, there was only \$100,000 worth of syndicated mortgages. On December 31, 1976, there was only \$500,000. I am rounding these numbers off. With so few syndicated mortgages going on, why would there be any usefulness, in any event, in seeing whether there was switching? Candidly, I rather doubt the switching occurred in those early years, so why does it make any difference that the director or his staff did not go out and look for mortgage switching?

Dr. Anisman: I cannot say what the director would have found. What I can say is that he did not look, and the point of it is that there are relevant factors to a determination of whether a security was involved. It would have to do with the manner in which they were sold--

Mr. Kerzner: Let us tackle that. What else?

Dr. Anisman: --and the manner in which they are treated, which was simply not determined. In candour, I cannot say we have any evidence with respect to that.

Mr. Kerzner: So do I have switching, manner of sale and treatment? These are the three things you say he should have found out about but did not.

Dr. Anisman: I am saying those are the things that he should have looked for and that may have been there. I do not know whether they were there; they were there later.

Mr. Kerzner: Are you not prepared to concede that at least in 1975, it is highly unlikely that there was any switching going on and that if he had looked, he would not have found any anyway?

Dr. Anisman: I simply have no basis for determining that, except the amount of the funds.

Mr. Kerzner: You are not prepared to concede that it is a reasonable inference from the relatively modest level of syndicated mortgaging that it is highly unlikely there was any switching going on at that stage?

Dr. Anisman: I would say that Mr. Carnie demonstrated a pattern of conduct over years that seemed to increase in intensity as time went on, but

it is not something I think can be inferred from the amount of money; that is, I do not think one can infer that he was not beginning to engage in that conduct in the early years simply because the investments were small. There clearly would have been less opportunity, but I would not infer that there was no switching, although there would have been less opportunity, nor can I infer the nature of the representations made.

The reason I say that is that, as you recall, 20,000 letters were sent out. What was beginning was a serious selling campaign with respect to those investment vehicles, a selling campaign that Mr. Stransman said was a major element or one factor that one would look at in determining whether a security was involved.

1400

Mr. Kerzner: But the securities commission knew the 20,000 letters had been sent out. so it would have had that fact available to it.

Dr. Anisman: I do not deny that.

Mr. Kerzner: Then help me, please, with what you think he was likely to have found out in any event if he had asked any of the people who received the letter as to what they were being told. What was he going to find out?

Dr. Anisman: I do not know. I do not think there is any evidence on that. I think he might have found out that Mr. Carnie--it is possible; one can only talk about it--was conducting his business in the manner he subsequently--

Mr. Kerzner: Is there anything to suggest that if people answered some of these letters they were being told orally anything different from what was contained in the letter, at least at this early stage?

Dr. Anisman: No investigation was made to determine that.

Mr. Kerzner: How do we make a causal link between the fact that no one investigated it and the fact that something new would have been learned. I have a lot of trouble understanding--it is the old argument. He did not, but so what? What difference would it have made in any event?

Dr. Anisman: Unless he would have found something that would have led him to a different judgement.

Mr. Kerzner: But there is nothing you can point us to that was out there that he could have latched on to if he had only gone to look.

Dr. Anisman: No, I cannot point you to that and I think the only way we would know that would be if he had gone to look.

Mr. Kerzner: The third element you say he did not get was the question of how these were being treated. What does that mean?

Dr. Anisman: What I mean by "how these were being treated" is the manner in which Argosy administered them; in other words, the treatment of them with respect to bank accounts. Again, it is much like the switching argument.

Mr. Kerzner: But Mr. Beck, whether he is right or wrong, has told us that he does not think that makes any difference and would not have made any

difference to the decision in the light of the fact that what was being sold was a specific interest in a specific mortgage.

Dr. Anisman: The problem I have with that analysis is that concluding that what was being sold was a specific interest in a specific mortgage ends the question with the characterization. One can only conclude what is sold--whether it is an investment contract or an interest in a specific mortgage that the commission might have treated as a mortgage--when one has all the facts and all the factors to view.

I submit that the treatment of the funds received from those investors, the blending of them in a bank account and their subsequent allocation, which appears to have been inconsistent with the trust documents the commission had, might have led to a different decision, and there might have been other facts. I am not saying that any one fact is determinative--no one is saying that--but that all the facts might have altered the judgement and that a judgement could not be adequately made without them.

Mr. Kerzner: I want to touch briefly on this question of the prospectus and the deeming period of when people are deemed to know and the example you gave us of the broker and the fellow who buys through the broker who gets the prospectus a week earlier.

I thought that Argosy was a direct issuer in both sales of debentures. That is to say, it did not market them through underwriters; it sold directly on its own. Is that correct?

Dr. Anisman: As I understand it, yes.

Mr. Kerzner: So the only time we get into this brokerage problem in a deeming that the buyer had noticed three weeks ago is if the buyer bought through his own broker rather than buying direct from Argosy.

Dr. Anisman: Yes.

Mr. Kerzner: Do we have any information or evidence that will tell us what the proportions might have been of people who bought through brokers and people who bought directly from Argosy?

Dr. Anisman: I do not believe there is, but I can check on that.

Mr. Kerzner: While somebody is looking--

Dr. Anisman: No, there is not.

Mr. Kerzner: All right. If I am buying direct from Argosy, it must give me a prospectus either before I purchase or when I purchase. Which?

Dr. Anisman: They must give it to you after you purchase.

Mr. Kerzner: All right. In so far as I am buying through my own broker, you say that good industry practice would dictate that the broker make a copy of the prospectus available to the customer.

Dr. Anisman: He need not. What I said was--

Mr. Kerzner: What is usually done?

Dr. Anisman: I am not sure what the common practice is. I think that prospectuses are not normally sent to clients of a broker unless the broker's firm is a member of the underwriting group, in which case there is an obligation.

Mr. Kerzner: If I am buyer through my own broker, is it not good industry practice for my broker to bring to my attention, for example, the material risk factors that might be involved in my purchase, even though I physically never see the prospectus?

Dr. Anisman: I have to answer yes, it would be good industry practice to do it. I am not sure that it happens all the time.

Mr. Kerzner: One last item--and it may be that you pick the person who should give me the answer--relates to Dr. Hill's last comment about the fact that certain responses that have been made to his report were not brought to his attention during the response. Apart from the responsibility of the bank, apart from the responsibility of the auditors, are there any other responses that the Ombudsman feels were not brought to his attention during the normal section 19 process we have heard about? I do not care which of you gives me the answer, but I would like to make sure that we have them all.

Ms. Morrison: No. I do not believe there were any other responses, except the ones we addressed at the beginning.

Mr. Kerzner: You understand we are talking about the bank and the auditors. They are the only two I can identify that were not made to you during the course of your investigation process. If there were responses other than those two, I just want to add them to the list so the committee will have that available.

Ms. Morrison: No.

Mr. Kerzner: Okay, thank you. Those are my questions.

Mr. Chairman: Any questions from the members of the committee?

Mr. McLean: What is the procedure now? Are you going to finish up the questions and then go on into the wrapup, or what steps is the committee going to take?

Mr. Chairman: It is entirely up to the committee.

Mr. Philip: I think it should be in some ways influenced by counsel. I would find it useful for counsel to give a summation. Normally, with something this difficult or complicated, it would be reasonable to give counsel some time to prepare a written summation of the evidence that we could have and that we could sit down and go through, point by point, and question.

It would seem to me reasonable that it should be done as soon as possible. The problem is that we have not been granted time to sit either next week or even on April 27 before we come back. Do we need an order for us to meet with counsel the first week back, Todd? Can there be informal meetings of the committee in which we all agree to meet with counsel to be briefed?

Clerk of the Committee: Technically, the committee does not have authority to meet any time between now and the resumption of the House and the re-establishment of the committees. Under normal circumstances the committee

would consider its report together, rather than individually and informally.

Mr. Kerzner: Can I make this suggestion? I am prepared, but I had thought that now that we have heard from everybody, we would go in camera and, essentially, start our deliberations. In anticipation of that, I did some work last night and thought I would make a couple of changes, in the light of some things I have heard today. But, if you want, I am ready to tell you in camera, in terms of summary. We can start work this afternoon, if that is what you all want to do.

Mr. Ashe: This is probably one of the relatively few times Mr. Philip and I concur. I think that is the route to go. I know it is fine to say it is only Thursday afternoon at 2:20. Personally, I do not have far to go back to my constituency and do not have a problem. Some of the members in this room do not have that same luxury, in a closeness sense. I do not think we are going to get a summary and, in turn, a level of debate that is not going to be gradually, as the afternoon goes on, thinking elsewhere. I do not think that is fair to this subject.

I would like, obviously with the general concurrence of the committee, to see counsel summarize in a written form, and I am not talking about great detail. I hope we have heard the detail; we have the detail. This could be literally point by point, with maybe a phrase, a sentence, whatever he feels is appropriate, obviously. I do not mean a 200-page summary. I hate to put a number on it, but a 10-page summary would be more relevant than a 200-page summary.

1410

Mr. Kerzner: Counsel does not want to do a 200-page summary.

Mr. Ashe: I am glad to hear that. If he does, we will pay him, but we will not pay him by the page. Let us put it that way.

I think it would be appropriate, as soon as possible--I think that is extremely important; we talked about that on Monday when we asked for the extra time--that the committee reconvene in its present form, at least for this subject.

I do not know about everybody else, but I am on this committee for this subject. As you know, I am not a regular member of the committee. I do not think we should get into any other deliberations until this matter is dealt with and finalized. Then if there is a reconstitution of the committee, so be it. I appreciate the rules of the House. We still have to have an order to make that happen, but I think it is important that it does happen in that way and as soon as possible.

Albeit there is, no doubt, a verbal dialogue, some written points in front of us would be more helpful. I hope that as soon as counsel has the written form prepared, it will be made available to us through a confidential mailing or whatever so that we can peruse it and make our own notes in anticipation of the face-to-face discussion of the summary and the conclusions of the committee.

Mr. McLean: Just briefly, I must say how disappointed I am that the House leaders did not give us the opportunity to have more time for something as important as this. We deal with many matters that are not as important, and

it is an indication to me that the government wants to prolong it as long as it can so it does not have to make a decision.

Mr. Bossy: That is not true; that is a political statement.

Mr. Hennessy: As far as I am concerned, the members of the committee should remain as they are. I agree with my colleague Mr. Ashe. It so happens that in our business, although people do not realize it, we are expected to be in four places at the same time. If you are not there, they are mad. They are not going to vote for you any more if you do not show up. You get into the position where you find it difficult to decide whom you are going to shake hands with.

Mr. Philip: With the kind of plurality you have, I do not think you are all that worried.

Mr. Hennessy: With all due respect, I think the committee should make sure there are no changes in the composition of this committee. If you have two or three members who have sat here through it all and they are replaced by three different members, that is going to make a difference if there is a close vote.

I am just saying that all members should remain on this committee, as Mr. Ashe said, until this thing is over. Then if they want to change the committee around, it is a different ball game. Some members want to change from one committee to the other or they may not be available that day, but I want to let the chair know that I think all members of this committee should remain until this is finalized.

Mr. Philip: Maybe we can resolve this quickly. We will need an order to sit. We would have to get that order in process the week of April 28 so that we could sit the following week in camera and deal with Mr. Kerzner's summation and then start dealing with the report and our conclusions to the report.

The procedure then would be that once we have come to some conclusions, we would call in both parties. We would go out of camera and we would announce our decision at that point to the Ombudsman and the ministry officials. I think it is only fair that the other people who made presentations be advised of when that will be done. Allowing for one day of deliberations, possibly two, we could at least be aiming to give an oral report in the second week of May, with the written report to follow. Does that sound reasonable?

Mr. Hennessy: All I am concerned about is that we have a chairman here. I think it is up to the chairman to make any announcement of any decision that is made. That is what he is there for. I do not think anybody else should make it, because there are two sides involved in this argument.

Mr. Philip: That is what I was saying, with respect. I was going through the process of how it would be done, and it has to be announced to both sides equally in an oral presentation by the chairman.

Mr. Hennessy: We are all experienced politicians. We know what has to be done. I think we do. Otherwise, we should not be here.

Mr. Philip: If you knew what was to be done, why would you question the process?

Mr. Chairman: If it is the wish of the committee, we probably could meet on May 6. I think that is the earliest, is it not?

Interjections.

Mr. Chairman: April 29 is the first Wednesday after the House goes in. May 6 would be the second Wednesday, and we have been a standing committee. Is that favourable to the committee?

Interjections.

Mr. Chairman: In the interim, counsel will prepare a report.

Mr. Kerzner: We are going to be meeting in camera on May 6. Is that what you are saying?

Mr. Chairman: That is what we are saying.

Mr. Ashe: We hope to have your summary in writing before that time, and then you can, if you will, present it with more verbiage on that day. We can then carry on into our discussion. To me, that would be the most fruitful way of bringing this issue to a conclusion.

The committee adjourned at 2:17 p.m.

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Official Report of Debates

Legislative Assembly of Ontario

Standing Committee on the Ombudsman
Supplementary Estimates, Office of the Ombudsman



Second Session, 33rd Parliament
Wednesday, February 4, 1987

Speaker: Honourable H. A. Edighoffer
Clerk of the House: R. G. Lewis, QC

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON THE OMBUDSMAN

Wednesday, February 4, 1987

The committee met at 10:14 p.m. in room 151.
After other business:

SUPPLEMENTARY ESTIMATES, OFFICE OF THE OMBUDSMAN

Mr. Chairman: I will call on Mrs. Meslin to explain the supplementary estimates to the committee.

Mrs. Meslin: I have asked our controller, Allan Mills, to give you a brief outline of why we requested the supplementary estimates.

Mr. Mills: In the current fiscal year, we had a very bad experience in terms of severance payments and maternity benefit payments. In the case of severance payments, they amounted to \$89,000 versus \$47,000 in the preceding fiscal year. In the case of maternity benefit payments, they amounted to \$54,000 versus \$21,000 in the previous fiscal year. On the basis of that experience, we sought an extra \$80,000 in supplementary estimates.

Similarly, with services, we had provided some \$28,000 for legal and commercial services. With Dr. Hill's decision to retain Professor Anisman, we found it necessary to request a further \$20,000 under the services category for legal services.

Mr. Shymko: Is the decision to close the North Bay office financially affecting the estimates and the expenditures?

Mr. Mills: Yes.

Mr. Shymko: Is there a cut or an increase? Obviously it would indicate a saving.

Mr. Mills: There would be a long-term cut, but the immediate impact is the—

Mr. Shymko: What is the immediate impact?

Mr. Mills: In terms of payments to the individual employee, it is \$60,000. In terms of the buy-out of the lease, it is \$20,000 and a further \$2,000 in miscellaneous expenses for a total of \$82,000.

Mr. Shymko: We are looking at an \$82,000 increase.

Mr. Mills: Yes, but it is a one-time increase.

Mr. Shymko: Yes. Eventually you are looking at a long-term saving from the closure of the office.

I want to ask the representatives of the Office of the Ombudsman the following: Recently, the Premier (Mr. Peterson) declared the opening in North Bay of the Ministry of Correctional Services headquarters. Pretty well all the ministry's offices will be located in North Bay. I do not have the figures of the actual number of cases that deal with Correctional Services, but my understanding from the years I have sat on this committee is that the vast majority of complaints to the Ombudsman's office come from this area; 50 to 60 per cent. In the light of that development and the opening of that office, logic dictates to me that there should be a review of that decision and maybe the office should be reopened. Has that decision in any way caused the Ombudsman's office to review its closure decision originally made by the Ombudsman? Second, do you see the setting up of the Ministry of Correctional Services headquarters impacting in any way on the work load and the case load etc. flowing from that area?

Mrs. Meslin: In answer to your question about the moving of the Correctional Services offices to North Bay, we are certainly in the process of looking at it. Our correctional investigators are all centred in Toronto and travel all over the province. As far as the North Bay office is concerned, we have indicated to this committee and to the Board of Internal Economy that we are doing an in-depth study and will be reporting to this committee and the board on this study relating to offices in the north and the North Bay office—as you know, we have a field worker in the North Bay office four days a week at this time. The study will determine whether that should continue, whether the office should come back into North Bay or whether there should be an office in another place. For the committee's edification, significantly, the complaints we have had from that office since we changed it over to a field officer have increased dramatically. We are putting all those figures together as part of the study that is being done and will be reported on within the next short period.

1050

Mr. Shymko: Have you actually set up the study already? Is it on its way?

Mrs. Meslin: Yes, we are well into it.

Mr. Shymko: Is there a deadline? Is there a date when you feel the study should be completed and the report submitted to the Ombudsman?

Mrs. Meslin: Dr. Hill is completing the first report, which is a report requested by the Board of Internal Economy about the field officers and their impact, since that was a one-year pilot project. Part of those data now fed in includes North Bay, but he is hoping to have the North Bay study done within the next few months.

We do not have any difficulty getting the statistical information together, but he has instructed us to interview municipal and community political leaders in all the major areas that this study should encompass to get their views and feedback. We have people in the midst of doing that now, so as we get the appointments to see these people, those data go into the study.

Mr. Shymko: We are putting the cart before the horse. We would have loved to have seen such a study done before the decision by the Ombudsman to close the office.

I am sure that, had there been some consultation between the Ombudsman and the Minister of Correctional Services—plans for the establishment of the headquarters, if I may use that terminology, were well under way. I am sure contingency plans and studies in the ministry existed way back in September 1986.

It is unfortunate. With these developments, which you admit will impact on the operation of the office locally, because you are having that study—you do admit there is a relationship of cause and effect.

Mrs. Meslin: No, I have not said that impacts it directly. I am saying the study has been commissioned because of the experience with the North Bay closing and in order to make sure that, whatever occurs, we will have all the data required to make that decision. Of course, the move by the Ministry of Correctional Services up there has some impact all over the area, in both Toronto and elsewhere, and has to be looked at.

Mr. Shymko: Are you saying there is a possibility the office may be reopened pending the study?

Mrs. Meslin: Anything is possible.

Mr. Philip: I would like to deal with the first vote, in which you have a program description. Would you like to elaborate on that and give an instance of where that kind of program will be implemented?

Mrs. Meslin: I am sorry, I must have missed the thrust.

Mr. Philip: Vote 3701, the program description: "To investigate any decision or recommendation made or any act done or omitted in the course of the administration of a 'government organization.'"

Mrs. Meslin: What is the question in relation to that? I am sorry.

Mr. Philip: You are asking for an extra amount of money to implement that kind of program. Am I right in saying that what you are doing is putting on your chart what amounts to someone who will investigate systemic problems? Is that what that is all about?

Mrs. Meslin: No.

Mr. Mills: The request for funds is aimed at a specific shortfall in moneys to meet expenditures, occasioned by maternity and severance payments. What you have read to us is just a generic description of the Ombudsman program.

Mr. Philip: Okay. The shortfall was caused by—

Mr. Mills: By severance payments being much larger than the previous year and by maternity payments being larger.

Mrs. Meslin: To clarify, last year, in maternity benefit payments, we paid out to six employees. In the year in question, there are 17. You can see the difference right there: the numbers of people who are involved. There is no way for us to estimate that. If we look at last year's experience, we estimate a similar amount of maternity benefits. When it goes from six to 17, it is out of our control, anyway.

Mr. Philip: How much would maternity benefits alone amount to out of the total amount you are asking for?

Mr. Mills: Maternity payments are \$53,500 in the current fiscal year.

Mr. Philip: They are \$53,000 of your shortfall.

Mr. Mills: Yes.

Mr. Philip: Over half of the amount of money you are asking for is related to the unexpected increase in maternity.

Mr. Mills: Most of the elements of severance payments can be accurately forecast, but the incidence of maternity cannot be.

Mr. Philip: I will not ask the obvious question, to what do you attribute this?

Mrs. Meslin: Happy families.

Mr. Philip: The remaining \$47,000, then, is related to severance benefits and—

Mr. Mills: There is \$20,000 for professional services, the amount necessary to retain Dr. Anisman.

Mr. Morin: Who is he?

Mr. Mills: Dr. Anisman is the expert on securities law whom we have had to retain for this Argosy report.

Mr. Philip: No doubt we will be seeing him when we deal with the Argosy matter.

Mrs. Meslin: No doubt at all.

Mr. Philip: One of the things I have always felt strongly about was that the Ombudsman should have at his or her disposal the right to outside consultants, particularly when you are dealing with matters that are very technical, such as securities. I gather he has considerable expertise. Why was he chosen over someone else, or what was the nature of the contract?

Mrs. Meslin: We made inquiries from the universities to begin with and throughout the legal community to find experts in the fields we required: securities law and mortgages law, etc. There were two names that came up, and we approached both gentlemen. One could not take on the contract at all and Dr. Anisman could, because he was a professor at York University, at Osgoode Hall Law School, and was just moving over into private practice, so he was prepared to take it on. He has very good credentials, which will be reported to you as we go through the Argosy thing.

Mr. Philip: I do not want to get into the Argosy matter in specifics, but would I not be correct in saying that, while you condemn both the securities commission and the registrar of mortgage brokers and condemn the lack of communications between the two, you come down more heavily on the mortgage brokerage side than you do on the securities commission? Would that be a fair statement?

Mrs. Meslin: I do not really think I am prepared to make that statement.

Mr. Philip: Was the consultation just for the securities side, or is he an expert in mortgages too?

Mrs. Meslin: He is an expert in both.

Mr. Philip: In fact, he prepared a lot of the background on both sides?

Mrs. Meslin: He assisted us in terms of vetting and in terms of our understanding and analysis, and assisted us in the final report.

Mr. Philip: That \$20,000 may seem a lot to the layman, but considering the amount of money that has been spent on consulting fees by

the government in recent years—and those of us on the standing committee on public accounts know only too well—for studies that have been of a questionable value, how did you do it for \$20,000? Maybe you should be advising the government on where to pick up that kind of consulting. I do not expect an answer. I have no questions.

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Mr. Morin: Mr. Mills, could I have more details on the \$60,000 severance pay? What does that represent? Could you give me a little more detail on that?

Mr. Mills: You are talking about the payment to Mr. Moody? First of all, \$50,398 was one year's salary in lieu of notice. Second, the Public Service Act requires us to make severance payment equal to one week of salary for each year of service as long as the employee has a minimum of five years of service. That payment to Eric was a further \$9,383.

Mr. Morin: Am I correct in saying that if the government has decided to open or to relocate the Ministry of Correctional Services in North Bay, and if on account of that you would have to consider now reopening the office in North Bay, that it would be a \$60,000 error?

Mr. Mills: To be quite candid, I have wondered that myself. I have talked to people in our institutional investigations area. They have explained to me that the majority of our dealings on a day-to-day basis are not with the head office of the Ministry of Correctional Services but rather with individual institutions. That is not to say there is no contact between the office and the head office of Correctional Services, but it does not affect the day-to-day functioning of our operation, as I understand it.

Mr. Morin: Mrs. Meslin, you have mentioned that the number of complaints has increased in North Bay. Why is that?

Mrs. Meslin: My assumption is that it is because the field officer is now doing community outreach, which was not done before.

Mr. Morin: It was not done by Mr. Moody?

Mrs. Meslin: No, not to any extent.

Mr. Morin: If the number of complaints increased and confirms what it used to be before, when community outreach contacts were made, where it would come back to normal, as it was before, where you had a large number of complaints, would this influence you and Dr. Hill to reconsider reopening the office in North Bay?

Mrs. Meslin: I think what we are seeing is that the increase has gone from what was a minimal number of complaints to what is equivalent to the kind of complaints that other field officers are bringing in. If we look at it in comparison, that is where it is. For instance, it does not come near to complaints brought in by Thunder Bay even now.

Mr. Morin: On the question of \$60,000 again, the question of reopening the office in North Bay, Mr. Mills, you have mentioned that normally it is the 19(1) that is given directly by the investigator, whenever he conducts an investigation, right to the jail; hence, the reason you would not see the necessity of having regular contacts with headquarters with the ministry. I think it was considered that Thunder Bay, because of the location of the Ministry of Natural Resources and other ministries there, was looked at as the mini-Queen's Park, so we have decided to open an office over there.

Because of the number of civil servants now that you will find in the Ministry of Natural Resources, the Ministry of Correctional Services and the Ministry of Transportation and Communications, do you not think it would be necessary—or should I ask this question to Mrs. Meslin—to reconsider the opening of the office in North Bay?

Mrs. Meslin: Those offices are not all centred in North Bay, but certainly—

Mr. Morin: MTC has a large organization, and so does Natural Resources.

Mrs. Meslin: Yes. What we are doing is, as I have said, a very thorough study of the whole area to be sure that when and if we open another office, we have to be doubly sure it is in the correct location, whether it be North Bay or anywhere else in that northern area. I think it would be incorrect of me to jump the gun before we have all of the results from this extensive study for the committee to see.

Mr. Morin: I guess it would be quite embarrassing, too, if you were to decide to reopen the office in North Bay after spending \$60,000 on one individual.

Mr. Shymko: That is a \$60,000 question.

Mr. Morin: Exactly. That is all, Mr. Chairman.

Mr. Sheppard: I have one comment about the closing of the office in North Bay. It appears to me that you had a gentleman there you wanted to get rid of, so you closed the office. Now you are getting more inquiries than ever, so I guess it will

be a matter of time to see whether the Ombudsman opens an office in North Bay in the future.

My question is that the supplementary estimates are pretty vague. On vote 3701, it looks as if the estimates for 1986-87 are \$6,446,700, and in 1985-86, they were \$6,052,000. That is a difference of \$394,700. Can you explain that to me?

Mr. Mills: My figures for 1986-87 are \$6,446,000 and for 1985-86, they are \$6,052,000.

Mr. Sheppard: Which is a difference of \$394,700.

Mr. Mills: I am sorry, the difference I calculate is \$196,000 plus another \$100,000 that we are getting on supplementary.

Mr. Sheppard: I calculated it three times and Mr. Shymko agrees with me.

Mr. Shymko: We just subtracted the 1985-86 estimates from the 1986-87 estimates. That gives \$394,700. It is simple arithmetic. Is it wrong to make that calculation?

Mr. Mills: No, it is not.

Mr. Sheppard: It cannot be. The figures are here. I just want you to explain those to us.

Mr. Mills: May I see them?

Mrs. Meslin: We do not have the same sheet that you do.

Mr. Mills: I have what I submitted to the Board of Internal Economy.

Mr. Mills: The actual increase, with supplementaries, is \$296,000.

Mr. Shymko: How come those figures you gave us are wrong?

Mr. Mills: I do not think I gave you these figures.

Mr. Sheppard: Every one of us on the committee got those figures.

Mrs. Meslin: We did not give you those figures, though; the clerk gave you those figures. Those are not the figures we gave to the Board of Internal Economy. What happens between there and here—

Mr. Mills: The calculations are arithmetically correct.

Mr. Shymko: Mr. Sheppard, is our calculation correct or not?

Mr. Mills: It is arithmetically correct.

Mr. Sheppard: You have the figures now. The clerk gave us the supplementary expenditures. I would like you to explain to me the \$394,700. You have it in front of you now. My

colleague Yuri Shymko and you say they are right.

Mr. Mills: The supplementary estimates were \$100,000.

Mrs. Meslin: We were just talking about them.

Mr. Mills: And the balance is the normal increase—at least, the increase we sought—from the Board of Internal Economy and obtained, which is 3.14 per cent. There are increases in every category.

Mr. Sheppard: Mr. Chairman, how come we got such vague supplementary expenditures this morning? You did not give them to us; the clerk gave them to us.

Mrs. Meslin: May I make a clarification for you, because I can see where your confusion is. Supplementary estimates are only those extras that we ask for if we get into trouble over and above our estimates. The supplementary estimates we asked for were about \$100,000, which is exactly what we explained to you. If you need the report on the estimates, which I think you discussed previously, we can get all of that information for you. So when you say \$394,000, the only part of that which we were discussing today was the supplementary estimates part, which is \$100,000, and we explained it in terms of severance and maternity benefits.

Mr. Shymko: May I have a supplementary with the permission of my honourable colleague? If indeed the difference in the estimates from 1985-86 and 1986-87 was \$296,000, as you indicated correctly, the additional \$100,000 make the figure that Mr. Sheppard and I calculated, by some \$2,000 difference.

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Do I understand your request for the additional \$100,000 came as a result of recent developments, obviously, because you originally had not anticipated the need for the additional \$100,000?

Mr. Mills: We do financial forecasting, and in November we prepared a forecast based on six months actual and six months projected. It revealed a substantial shortfall, on the basis of which we requested another \$100,000.

Mr. Shymko: Would it be wrong on the part of committee members to assume the Ombudsman's decision in September to close the North Bay office, for example, resulting in the need of a payment of some \$82,000 in severance and salaries, was the reason for the request for the additional \$100,000 to cover that expense, which I am sure was not predicted and was not forecast

in your calculations at the beginning of your preliminary estimates?

Mr. Mills: That is partly true.

Mr. Shymko: Why is it partly true?

Mr. Mills: A sum of \$20,000 was asked for, for Dr. Anisman, and the maternity benefits, which I have already explained, had nothing to do with the closure of the North Bay office. As I said, they were \$53,500 versus \$21,000. We had a very bad experience. North Bay is obviously part of this equation, but it would be misleading to say it is the whole thing.

Mr. Shymko: In looking at the cost, if we take the total difference of \$394,000 between last year's estimates and 1986-87, that North Bay closure constitutes 20 per cent of your budget increase, which is a very important proportion. Was it taken into consideration that the closure of the office would result in additional costs when the decision was made?

Mr. Mills: I think the decision was inevitable.

Mr. Shymko: You knew it would cost you close to \$100,000 if you were to close the office.

Mr. Philip: That is not the case.

Mr. Shymko: I just wondered whether—

Mr. Philip: I think there is a fault in your reasoning, namely, that you would have to deduct from that the amount for keeping it open. Unless you have that figure, you cannot say it was directly attributable to the North Bay closing. There were expenditures in keeping it open as well.

If you look at what the increase would have been for 1986-87 as compared to 1985-86 without the supplementary estimates, you get a 4.9 per cent increase, which is pretty much in line with or under what the other government agencies have spent. You have a 6.5 per cent increase as a result of these supplementary estimates, but of that, over half is related to matters that simply could not be foreseen, namely, a large increase in pregnancies.

Mr. Sheppard: Mr. Chairman, I understand Mr. Shymko had one more question before turning it over.

Mr. Philip: I have not finished my point, and I think Mr. Shymko was listening to me, if you are not.

Mr. Sheppard: Yes, I was, but I thought you were done.

Mr. Philip: I will do it over again if you do not understand it, Mr. Sheppard.

What you have is a 4.9 per cent increase if there had been no supplementary estimates. You

have roughly a 6.5 per cent increase as a result of the supplementary estimates, but over half of that was not related to North Bay at all. In the North Bay portion, and we could probably calculate it if we spent some time, you cannot even take all of that, because there would have been additional expenditures to keep it open.

Mr. Shymko: This is what I never received in an answer. I think you are clarifying that the answer is not as simple as my figure of 20 per cent, but what savings would have been incurred? What would have been the cost of the operation of the office had Mr. Moody not resigned? Can you give us a comparison of the cost of the operation of the office now and what the cost would have been had there been no change—just for the operation of that office?

Mr. Mills: Okay. In the fiscal year 1986-87, we provided \$110,000 to operate the office.

Mr. Shymko: That was budgeted for 1986-87. Now?

Mr. Mills: At the end of December, we had actually spent \$149,000.

Mr. Shymko: Now you are adding \$82,000?

Mr. Mills: The \$82,000 you allude to is included in the \$149,000.

Mr. Shymko: Okay. The actual figure—where Mr. Philip's intervention came in—we are talking about is \$39,000, almost \$40,000, not \$82,000.

Mr. Mills: I think I can clarify Mr. Sheppard's concern. It has to do with the way this information is presented. You asked about an increase of \$394,700. It is true that the 1985-86 estimates were for \$6,052,000. In that fiscal year, the office had the funds to pay two economic increases that the government announced. Without actually asking for extra money, we went to the Board of Internal Economy, which approved the economic increases.

Those increases to salary have a spillover effect into the next fiscal year. They amounted to \$198,700, which is the difference in the two figures we are talking about. The result, going into the 1986-87 fiscal year, is that our base budget became \$6.25 million because the salary you pay with effect from January 1, 1986, has implications for the following fiscal year and has to be included in the budgetary base.

In a nutshell, there are three components: the increase of \$196,000 I have spoken of; the increase on account of the awarding of economic increases, which is \$198,700; and a further \$100,000 by way of supplementaries. Those total to your figure, \$394,700.

Mr. Sheppard: That explains it much better. Will you guarantee us you will not need any money for the next six months?

Mr. Mills: For the next six months?

Mr. Sheppard: Mrs. Meslin just said you review it every six months to see whether you need any more money, so I presume you will not need any extra money for at least another six months.

Mrs. Meslin: We are going to the Board of Internal Economy with our estimates on February 16.

Mr. Mills: For the year beginning April 1.

Mr. McLean: I have a couple of questions. Does your \$6,446,700 include the \$100,000 you are asking for?

Mrs. Meslin: Yes.

Mr. Mills: No, I am sorry. It does not. The \$100,000 is over and above that.

Mr. McLean: Then it is for \$6,546,700?

Mr. Mills: Yes.

Mr. McLean: The interesting point is when you have a \$6-million budget, why is there not room within that \$6 million to cut back somewhere other than some of these severance and maternity allotments? Is there no place you could have cut back? Has it happened that you hired more staff whom you are paying?

Mr. Mills: No.

Mrs. Meslin: One of the things Dr. Hill has done over the years has been to introduce a number of new programs, field officer programs, etc., without asking for more money. In essence, we have cut back in certain areas to develop new programs in other areas, without asking the government for more money. We have done it in that manner.

Mr. McLean: Okay. I would like to relate to you a program you are involved in. This reads: "In mid-October, Mrs. F, a woman living alone on disability, contacted our field office to advise us she had applied to the local housing authority in September and wanted to know the status of her application. The housing authority was contacted and a home visit arranged for the next week. On November 27, Mrs. F advised she had been offered a one-bedroom unit by the housing authority. The complainant advised she was to move in on December 5, just in time for Christmas."

I have some people in my area who certainly could use some help to get into Ontario Housing Corp. housing too. Are you in this field of helping people get into Ontario Housing?

Mrs. Meslin: No, I do not think that is the case at all. I think what happens is that we often have complainants come to us explaining something in particular. We communicate with the housing authority and if the complaint is justified by the housing authority, then, as in every other case, the housing authority will say: "We made a mistake. We are going to do it this way. We do it with your complainants or anyone else's. We are not in the business of getting housing for people. We are in the business of investigating complaints and trying to get to the bottom of the problem."

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Mr. Chairman: Mr. Bell, followed by Mr. Philip.

Mr. Bell: It does not matter: Mr. Mills or Mrs. Meslin. Has Mr. Moody received his severance package yet?

Mr. Mills: Yes.

Mr. Bell: The budget for the current fiscal year for North Bay was \$110,000?

Mr. Mills: Yes.

Mr. Bell: And you have spent or allocated the \$140,000-odd figure, which includes the \$60,000 payment to Moody.

Mr. Mills: Yes.

Mr. Bell: The difference between those two numbers, what you have actually spent and the \$60,000, would represent what your office actually expended as at the end of December for the North Bay office.

Mr. Mills: What we actually expended is \$149,000.

Mr. Bell: No, the difference between the \$149,000 and the \$60,000 is what you actually spent on the operation of the office—

Mr. Shymko: It is not \$60,000.

Mr. Bell: Yes, it is.

Mr. Shymko: The figure of \$82,000 was mentioned to me.

Mr. Bell: No. The \$82,000 is not all Moody's.

Mrs. Meslin: No. The \$82,000 is the total for the office.

Mr. Shymko: For the office. Okay.

Mr. Bell: Do you follow me?

Mr. Mills: Yes.

Mr. Bell: All right. That is what you would have spent in any event.

Mr. Mills: Yes.

Mr. Bell: I believe Dr. Hill said in September that the \$110,000 that would have been spent next year, absent inflation and other increases, will now be allocated in other parts of the Ombudsman operation. Is that correct?

Mr. Mills: Yes.

Mr. Bell: For 1987-88.

Mr. Mills: I presume you are aware that we had a stringer operating out of her home there.

Mr. Bell: All right. Minus that cost, the difference will be applied elsewhere.

Mr. Mills: Yes.

Mr. Bell: All right. Was any thought given to deferring Moody's payment to the next fiscal year?

Mr. Mills: To my knowledge, there was no thought given to that. It is my understanding that would not have been feasible.

Mr. Bell: Why?

Mr. Mills: Because we were releasing him effective of the end of October.

Mr. Bell: Was any thought given to amortizing it?

Mr. Mills: Not to my knowledge. My understanding of the settlement reached between the two solicitors was that payment would be made immediately.

Mr. Bell: So, in effect, he got 24 months' salary in a one—

Mr. Mills: Twelve months' salary.

Mr. Bell: No. In effect, for his 1986 taxation year, he got a payment equivalent to nine or 10 months of salary actually earned, plus he got an additional 12 in that same tax year.

Mr. Mills: No. In 1986, he received a 12-month payment of salary.

Mr. Bell: Plus he received his salary actually earned to that point in time in that year.

Mr. Mills: No, just the 12-month payment of salary.

Mr. Bell: No. He worked for you up till September when you released him. So he got nine months' salary he has actually earned. He got the equivalent of 21 months' salary in 1986.

Mr. Mills: The taxation year is the fiscal calendar year.

Mr. Bell: I am not talking about your fiscal year; I am talking about his tax year.

Mr. Mills: Yes.

Mr. Bell: He got 21 months' salary in 1986.

Mr. Mills: Yes.

Mr. Bell: Is it your office's understanding that the public service payment obligation you have described, which is the difference between \$60,000 and his annual salary, is required to be an additional obligation to payment in lieu of notice, or is it possible to calculate that obligation as part of the payment in lieu of notice?

Mr. Mills: Again, this was worked out between the two solicitors. As I understood it, they decided upon a year's salary in lieu of greater notice being the settlement.

Mr. Bell: Then he got more on top of that.

Mr. Mills: Depending on what you mean by more.

Mr. Bell: He got an equivalent of almost 14 months' payment in lieu of notice.

Mr. Philip: That would be holiday pay.

Mr. Bell: No, it is not holiday pay; it is something different.

Mrs. Meslin: I think the understanding is that the severance was unrelated. According to our understanding of the Civil Service Commission and the way it pays, our understanding of the way it was to be paid was that there was an amount in lieu of notice, and then severance was calculated separately.

Mr. Bell: All right. When did Mr. Moody receive his severance?

Mr. Mills: My recollection is early November.

Mr. Bell: Has he been re-employed since his termination?

Mr. Mills: I understand that he is working on a contractual basis with the Ministry of Transportation and Communications.

Mr. Bell: Was he on that contractual basis at the time the severance package was effected?

Mr. Mills: He signed an affidavit saying he was not employed when he received the severance package.

Mr. Bell: Do you know how long the contract is that he is working under?

Mr. Mills: I understand it is for six months.

Mrs. Meslin: By the way, part of the severance package was the assistance of a consultant for Mr. Moody, and he has not yet taken advantage of that. We hope he will before too long.

Mr. Bell: That would be an employment relocation consulting service.

Mrs. Meslin: Yes.

Mr. Philip: Will that be an additional charge from them?

Mrs. Meslin: Yes.

Mr. Bell: If you had amortized the payments to him, would you have had to come here for a supplementary estimate? Absent Mr. Anisman—that is a different issue—just talking about Mr. Moody and the 12, 14 or whatever months' equivalent it is, if you had amortized the payments, would you have had to come here for supplementary estimates for that portion of what you are now seeking?

Mr. Mills: The forecast we did made things look pretty bleak. We came on that basis. It would have been a pretty touch-and-go sort of thing.

The Office of the Ombudsman is in a unique position. We usually ask for money in April, and we have one opportunity to get supplementary estimates. Unlike almost any other publicly funded agency, we have no options for funding other than those two occasions. So it has been our practice to be very cautious; let me put it that way.

Mr. Bell: Let me ask the question this way then: If the payment to Mr. Moody had been amortized, would your supplementary estimates as presented today be lower by some amount?

Mr. Mills: Yes.

Mr. Bell: Is it fair to say that amount lower would be equivalent to the amortized portion not yet paid or not yet required to be paid as of the end of your fiscal period?

Mr. Mills: As of the end of March.

Mr. Bell: Are you nodding yes?

Mr. Mills: Yes.

Mr. Philip: How many years did Moody work for you?

Mr. Mills: Ten.

Mr. Philip: You gave one year's—

Mr. Mills: One week of salary for each year of service.

Mr. Philip: One week for each year of service. That is the formula most often used in European countries at the time of severance by private and public corporations. I gather the purpose of it was to avoid a wrongful dismissal suit. Is it correct that he would have sued?

Mr. Mills: It is a fair assumption that he would have sued had he not received a year of salary in lieu of notice.

Mrs. Meslin: In fairness, that has been the policy of the Ombudsman in terms of people who have been there more than five years. It is not unique to Mr. Moody.

Mr. Philip: It is more a policy of fairness in keeping with what is done in other jurisdictions rather than what is obtained traditionally in lawsuits in Ontario.

Mrs. Meslin: It is a matter of policy for us, yes.

Mr. Philip: How old is Moody?

Mr. Mills: My recollection is 50-odd.

Mr. Philip: He is right at the age where people tend to get large settlements.

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Mr. Shymko: It is also the most critical age for getting a job.

Mr. Philip: The effect on the person's career pattern is one of the considerations the courts look at in their settlements. Somebody who is 79 years old would not likely get as large a settlement as somebody in his 50s.

One of the things that puts the whole matter of the total expenditures into perspective is to keep in mind that expenditures are not nearly as much of a concern in terms of percentages, depending on the percentage of revenue. If we look at the Ombudsman's increase, including the supplementary estimates, we get 6.5 per cent. The increase in the 1986-87 budget over 1985-86 was 7.4 per cent, projected on an increase in revenue of 8.2 per cent. Revenue is up considerably over that, if I am not mistaken. If we compare what the Ombudsman has asked for, even with the supplementary estimates, in terms of increase in his budget, it is fairly low compared to what the government was projecting generally as an increase for all the ministries combined.

Mr. Shymko: It would be double the rate of inflation.

Mr. Philip: The rate of inflation is going up now. You also have to tie it to revenue and the ratio of revenue to expenditure is important. Certainly, the Ombudsman is holding the line in comparison to the ministries overall, if we look at it in terms of increases.

Mr. Morin: How much is a stringer paid?

Mr. Mills: He is paid \$18,000 for a three-day week.

Mr. Morin: Do they have all the other benefits attached?

Mrs. Meslin: No. It is a contract position because this is a pilot project.

Mr. Mills: They get unemployment insurance, Canada pension plan and Ontario health insurance plan after three months' employment.

Mr. Shymko: What would that be per year?

Mr. Mills: If you annualize it?

Mr. Shymko: Yes.

Mr. Mills: Divide by three and multiply by five. It would be \$30,000.

Mr. Shymko: That would be his salary.

Mr. Mills: That is with no overhead, no extra expenses.

Mrs. Meslin: No office and no secretarial help.

Mr. Shymko: What would be the actual operation of the office with a stringer; that is, salary plus operation? Is the salary the operation?

Mrs. Meslin: That is it.

Mr. Shymko: Does he buy his own paper?

Mrs. Meslin: We send him paper.

Mr. Morin: The next question is to you, Mr. Chairman. When we have supplementary expenditures in the future, will it be possible to have a detailed summary of the budget? For instance, on the \$100,000, if we had a complete, detailed explanation or detailed figures in front of us, such as the salary of so and so is so much, it would make it easier for us to understand and make comparisons.

Mr. Sheppard: This is very confusing.

Mr. Morin: That is right; look at this.

Mr. Chairman: This came from the clerk but we usually have that from the Cabinet Office.

Mr. Morin: Can we have it?

Clerk of the Committee: Once estimates have been referred to a committee, it is customary for the Cabinet Office to forward all the background and briefing materials to the office of the House leader, who is responsible for distributing them to members of the committee. I assumed the same had been done for the supplementaries.

Mr. Morin: We did not receive it. We should receive it then.

Mr. Shymko: You should make a motion.

Clerk of the Committee: The Cabinet Office is responsible.

Mr. Chairman: Mr. Morin moves that in future the committee obtain all the documents.

Mr. Chairman: The motion is quite in order.

Mr. Philip: I have a question on the motion. Does that mean these become public documents?

Interjection: Do you mean the estimates now?

Mr. Philip: No, all the documents. I am sorry if I missed the motion, but what you are asking for is all documents—

Mr. Morin: The breakdown.

Mr. Philip: Just the breakdown, not the individual personnel documents and so forth.

Mr. Morin: That we always have the right to look at that breakdown.

Mr. Philip: I am concerned that most, in fact all legislatures and councils do not deal publicly with individual personnel. I am concerned that in the case of Mr. Moody, we may be verging on some of that.

Mr. Chairman: I understood from Mr. Morin that he wanted a breakdown of the supplementary estimates.

Mr. Morin: That is right, and also if the clerk

could have in his hands a copy of the individuals' names and everything so that I could have access to that instead of having to go to the Ombudsman myself.

Mr. Philip: You could also ask for the contracts if you want, by the two lawyers, in the case of Moody.

Motion agreed to.

Vote 3701 agreed to.

Mr. Chairman: This completes consideration of the supplementary estimates of the Office of the Ombudsman.

The committee moved to other business at 11.35 a.m.

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Wednesday, February 4, 1987

Adjournment O-42

SPEAKERS IN THIS ISSUE

McLean, A. K. (Simcoe East PC)

McNeil, R. K., Chairman (Elgin PC)

Morin, G. E., Deputy Chairman of the Committees of the Whole House and Acting Speaker
(Carleton East L)

Philip, E. T. (Etobicoke NDP) Sheppard, H. N., Vice-Chairman (Northumberland PC)

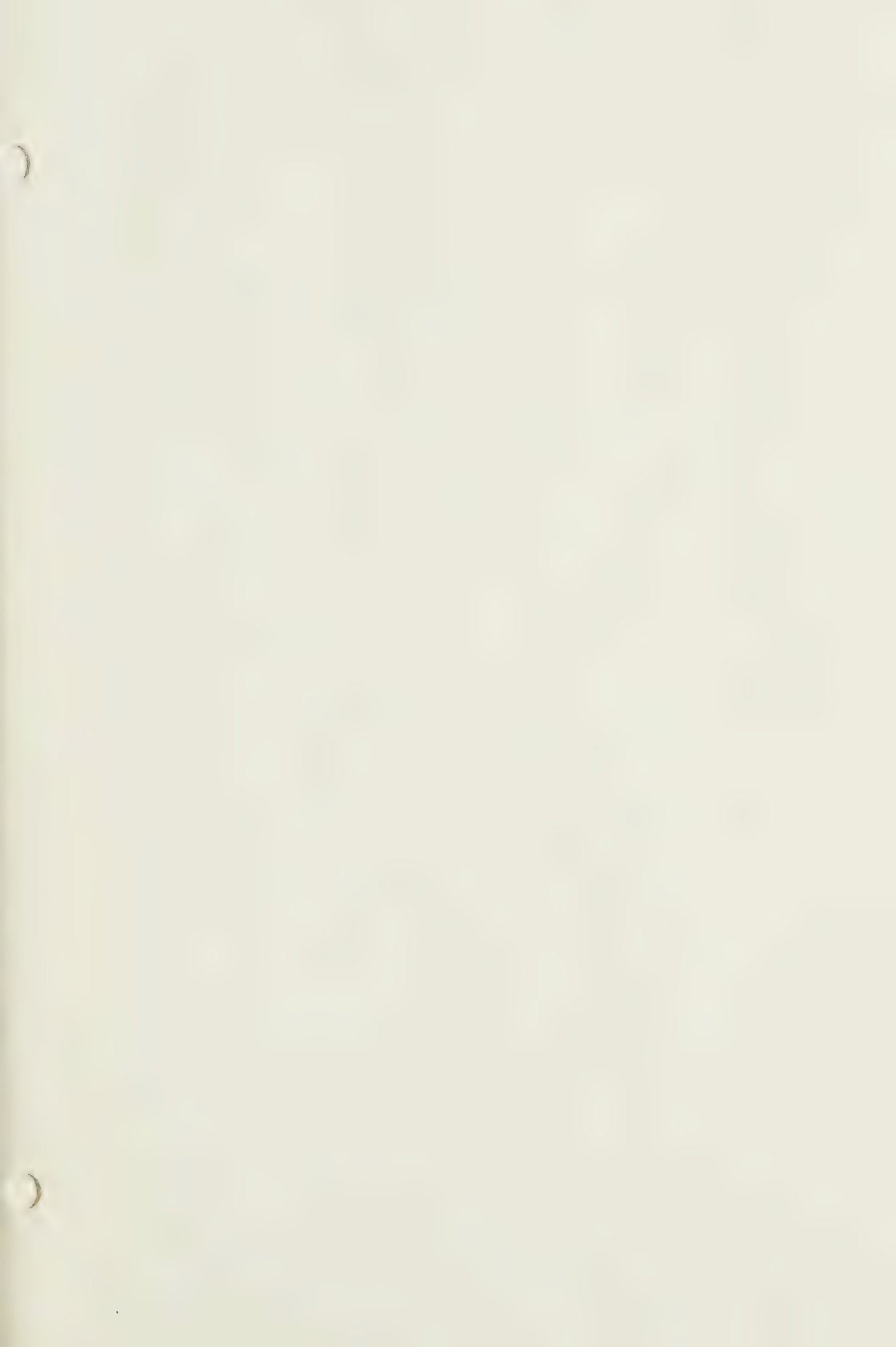
Shymko, Y. R. (High Park-Swansea PC)

Witnesses:

From the Office of the Ombudsman:

Meslin, E., Executive Director

Mills, A., Controller

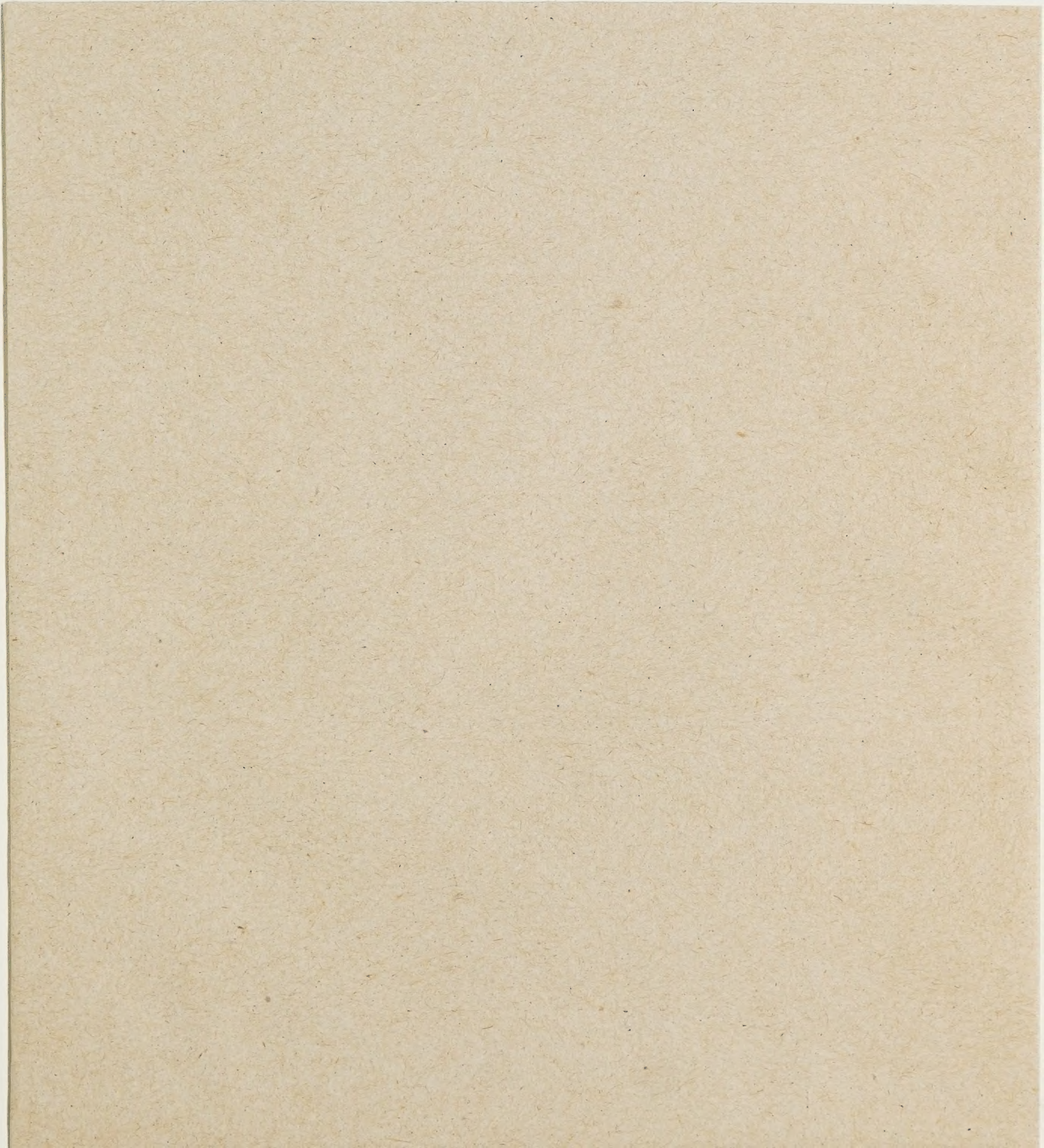








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